

HARVARD POLITICAL STUDIES

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DEPARTMENT OF GOVERNMENT

IN HARVARD UNIVERSITY

## HARVARD POLITICAL STUDIES

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A BRIEF HISTORY OF THE CONSTITUTION AND  
GOVERNMENT OF MASSACHUSETTS  
By Louis Adams Frothingham

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By E. Pendleton Herring

FEDERAL COMMISSIONERS:  
A STUDY OF THEIR CAREERS  
AND QUALIFICATIONS

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LOUIS ADAMS FROTHINGHAM FUND

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# FEDERAL COMMISSIONERS

A STUDY OF THEIR CAREERS AND  
QUALIFICATIONS

BY

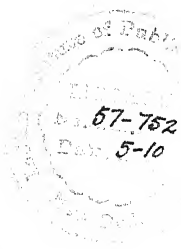
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TO MY MOTHER

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E. PENDLETON HERRING

Dunster House,  
May, 1936.



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## CHAPTER I

### INTRODUCTION

FALSTAFF: *Gentlemen, have you provided me here half a dozen sufficient men?*

SHALLOW: *Marry, have we, sir. Will you sit?*

FALSTAFF: *Let me see them, I beseech you.*

SHALLOW: *Where's the roll? where's the roll? where's the roll?—let me see, let me see:  
so, so, so, so.*

HENRY IV PT. II

There are no officials of more importance to American industry than those who man our federal regulatory commissions. The qualifications of these men is a matter of vital concern to all who fall under their far-flung jurisdiction. Yet as individuals these commissioners seldom stand before the public. Their collegiate character lends them a cloak of anonymity. They are answerable to no constituency. They are appointed by the President and confirmed by the Senate for terms that may far exceed the span of these elected officers. The Supreme Court has recently held that members of these commissions may not be removed by the Chief Executive except for cause as set forth in the law.<sup>1</sup>

Thus protected in their tenure and clothed with broad discretion under statutory authority, these officials wield power that may mean the life or death of railroads, public utilities, water power companies, radio, telephone, and telegraph corporations and a great host of industries engaged in interstate and foreign commerce. The business man or the banker may find his board of directors supplemented in fact, if not in name, by the members of the Interstate Commerce Commission, the Federal Reserve Board, the U. S. Tariff Commission, the Federal Power Commission, the Federal Trade Commission, the Securities and Exchange Commission or the Federal Communications Commission.

The membership of these agencies thus becomes a matter of great moment to the manufacturer, banker, broker or power magnate. The effectiveness with which the law is executed depends largely upon the ability of the official to deal with the business leader. As federal regulation is extended such encounters are multiplied.

<sup>1</sup> 295 U. S. 602, 1935.



"It is," one authority<sup>2</sup> states, "of fundamental importance that the government agents who sit across the table from business representatives in these new relations should command respect. The tasks which government is now undertaking are of a nature which present a new order of consequence of success or failure in the range of governmental action to which we have been accustomed. One key to success or failure is administration, which rests in the last analysis upon the capacity and character of the men and women who constitute it."

The practical problem of administration today is (1) to decide upon the qualifications that are appropriate to the demands made by a particular task; (2) to find men with the training and ability to satisfy these demands; (3) to keep such men in office for the period of their maximum usefulness. This problem is not easily met nor can a simple solution be offered. A closer understanding of what might be done will come from a survey of what has been done. Wherein are the weaknesses in the present system: in the appointees or in the appointing power; in the statutes themselves or in their application? Is there any agreement as to proper qualifications? Where have our commissioners been recruited? What kind of men have been secured? How long did they serve? What brought their service to an end? Where did they go afterwards? These are the questions that must be answered before we can evaluate the personnel of federal administrative commissions and make suggestions for the future.

If we would understand the process of carrying the law into execution, we must know something of the administrators. This is the more urgent at the present time when the complexities of regulating economic activities make it necessary to leave wide discretion in the hands of officials. The question today is not whether we shall have strict public regulation of private enterprise, but whether governmental activity of this sort shall take one form or another. In the prevailing diversity and confusion, there is also much experimentation that may yield notable results later. In the United States no form of control has been given more serious consideration than the special regulatory board or commission. This device has been adopted by the states for regulating public utilities through public service commissions and by

<sup>2</sup> L. D. White, *Government Career Service*, University of Chicago Press, 1935, p. 16.

the federal government for meeting many problems of control and supervision.

Inevitably the words of the statutes have been vague and the commissioners have been left with the weighty task of developing, as well as interpreting, their legal authority. The difficulties of guiding such independent administrative boards are well described by a former official in these words:<sup>3</sup> "Capital and labor, farmer and manufacturer, shipper and carrier, all have their spokesmen in Congress, often representing as one-sided a class view as the classes themselves. To understand all parties to the controversy, to combine the business man's point of view, as well as the farmer's, with the more detached conception of a non-partisan expert government body; to arrive at the judicial and national point of view; to discover the proper middle course conducive to the best interests of the entire country; to prevent harmful over-regulation in either direction; to overcome mutual distrust, prejudice, and suspicion of all parties concerned, is a task deserving of the best talent and the strongest character of the nation."

Unless such men are drawn to the government's service it is doubtful whether the awkward democratic ship of state can be kept upon its course. They are essential to the success of the inevitably deepening penetration of government into business. This course has been charted by circumstance. The question remains: who is to man the vessel? The politician who, like Gilbert and Sullivan's Admiral of the Queen's Navee, is hardly ever sick at sea, and is accompanied by his sisters and his cousins and his aunts, or the man who is able and trained to perform his duties.

This book attempts to disclose the salient facts about those who have served on the most important administrative commissions in the federal government. This means the collection of information relating to the members of the Interstate Commerce Commission, the Federal Reserve Board, the U. S. Tariff Commission, the Federal Trade Commission, the Federal Power Commission, the Securities and Exchange Commission, the Federal Radio Commission and its successor in 1934—the Federal Communications Commission. Due to the difficulty in finding the facts needed for all the Civil Service Commissioners, this important agency was omitted. In each case the effort was made to find the answers to

<sup>3</sup> Speech of Paul Warburg, to the Commercial Club of Chicago, April 7, 1917; reprinted in Volume II, p. 494, *The Federal Reserve System*, Macmillan, 1930.

the same questions for all the commissioners. One hundred and forty-three cases were studied. This figure includes all the members of all the commissions selected, starting with the original appointees and concluding with those serving on January 1, 1935.

The following questions were asked in the case of each commissioner: when was he born, and where; from what state was he appointed and what President appointed him; was he reappointed; what was the nature of his appointment and the actual length of his tenure; was his appointment challenged in the Senate and on what grounds; what reasons did he give for leaving the commission? What was his age and his occupation at the time of his appointment? What was his education? What were his fraternal, club and religious affiliations? What, if anything, had he written? To what political party did he belong and had he engaged in party activities? Had he served in public office?

With surprisingly few exceptions, it was possible to find the answers to these questions, either through consulting public documents, or by direct inquiry. Getting at the facts was not an easy task. There is no repository where such material is collected. Standard reference works do not supply comparable data in any systematic fashion. The search was carried into Congressional hearings, Senate investigations and the debates of Congress. The libraries at the various commissions yielded up material and officials assisted. Most important of all, the commissioners themselves both the "ex" and the active, patiently responded to questions which must at times have seemed personal if not impertinent.

In the pages which follow, an interpretation of this material is set forth. The appendices contain charts upon which many of the generalizations in the text have been based. In several cases, detailed factual analyses of the tables have been shifted to the appendix.

## CHAPTER II

### CONGRESS CONFRONTS THE PROBLEM OF QUALIFICATIONS

FALSTAFF: *Will you tell me, Master Shallow, how to choose a man? Care I for the limb, the thewes, the stature, bulk, and big assemblance of a man? Give me the spirit, Master Shallow.*

HENRY IV PT. II

Qualification is a relative conception. The subject must be considered with reference to some end or purpose. The characteristics of officials can be listed but it is not until we consider their attributes in relation to the demands of their office that the problem of qualification emerges. We must note the assumptions concerning the work of the commissions before judging the adequacy of the commissioners for performing their duties.

The Congress in establishing these regulatory boards had certain broad objectives in mind. They hoped to set up commissions that would be detached from partisan conflict and personal favoritism, and competent to deal with the intricate economic problems of business regulation. Congress wished to be relieved of those burdens of rule-making which were not adapted to a large representative assembly. Congress wished to secure advice from these boards in framing amendatory legislation. Thus the sphere of these commissions ranges from the details of administration to the realms of policy formulation. As Commissioner Eastman has stated:

Such commissions are legislative in the sense that they do work similar to that of the legislatures; they are judicial in the sense that they decide particular controversies, and employ procedures that resemble those of the courts, and they are executive, in that they undertake to see that the laws they administer are enforced.<sup>1</sup>

Such duties call for commissioners of judicial temperament, executive capacity and special competence in certain fields. A talent for organization and for handling people has been of vast importance especially when commissions are newly established. The

<sup>1</sup> *Report of the Federal Coordinator of Transportation*, 1934 as quoted from Report of the Transportation Conference, 1933-34, p. 28.

Senate Committee recommending the creation of the Federal Trade Commission stated: "It is of paramount importance that men of the first order of ability should be attracted to these positions. . . ."<sup>2</sup>

Beyond such vague general aspirations it is impossible to go in seeking to discover the purpose of Congress. Our commissions have suffered many political vicissitudes. The treatment accorded these bodies has often been at variance with the intentions voiced by Congressmen at other times.

Congress has on occasion fought over the qualifications of individual appointees, but no systematic effort has been made to formulate positive standards relating to the training and experience necessary for service on these commissions. Senators have talked of qualifications in vague "idealistic" language and sometimes they have acted with tough political shrewdness but they have not considered the problem objectively. It has generally been handled as a political matter; it has frequently been discussed as a moral issue. Will it ever be treated as an essentially administrative problem?

The most acrimonious discussion of the proper qualifications of our commissioners has arisen in connection with violent disagreement as to the policy particular commissions should follow. Although there has been much talk about appointing men of ability and integrity, their ability has been questioned and integrity challenged chiefly in those instances where the administrative policies and economic theories of particular appointees have strongly diverged from those of their critics.

There has been no objective consideration of qualifications *per se* by our statesmen or politicians. When the membership of administrative boards and commissions has been discussed in Congress the debate has been precipitated by deep-seated political differences.

Confirming the appointees to federal regulatory commissions is not a simple task of finding those men who seem best qualified by training and experience to fulfill the demands of the position. It is customary for the Senators sitting upon the Interstate Com-

<sup>2</sup> Report of the Senate Com., 63rd Cong., 2 sess., No. 597, p. 11 (1914). Quoted by Carl McFarland, *Judicial Review of Interstate Commerce Commission and the Federal Trade Commission*, Harvard University Press, 1934, p. 176. See also, House Committee, Sixty-third Congress, Second Session, No. 533, p. 2 (1914).

merce or Finance committees to question appointees concerning their education and previous activities. But there is little connection between what the Senators discover in this fashion and how they vote later. Committee hearings have revealed very clearly that certain appointees possessed very inadequate preparation for their duties. It is clear from reading these hearings that Senators place more emphasis upon certain attitudes and loyalties than they do upon the capacity or training of the appointee. These considerations are rather intangible but their nature can be suggested by questions such as these:

Will the appointee carry out the policy of Congress or will he attempt to develop a line of commission policy? Will he incline toward Presidential or toward Congressional leadership? Is he a friend of the little man or is he the supporter of big business? Is he more sympathetic toward the rich man or the poor man? Is he tied in with the Washington bureaucracy or is he taken fresh from private life? With what economic interests can he be identified? What is there in his background that suggests a connection with the "power trust" or the "sugar interests" or Wall Street? Senators are interested in two general points of reference: the appointee's financial connections and his political relations. Out of this they apparently hope to get his economic and social philosophy.

The significance of the answers to the above questions can only be ascertained in the light of the job to be filled and the conditions prevailing on the commission at the time. They are certainly important considerations, but since they must remain relative to a particular situation they can have little part in the formulation of general qualifications for service on all the commissions.

The most tangible evidence available on the attitude and intention of Congress is found in the words of the statutes fixing the requirements for service on the administrative commissions. In this chapter we shall consider in turn such statutory qualifications and attempt some estimate of their meaning as they have been applied.

### TENURE

The statutory intent with reference to tenure is unmistakable. Relatively long terms of office are provided. Reappointments are

arranged so as to bring about a gradual filling of vacancies. The term is 7 years on the Interstate Commerce Commission, the Federal Trade Commission and the Federal Communications Commission; 5 years on the Federal Power Commission and on the Securities and Exchange Commission. The members of the Federal Reserve Board can now have appointments for 12 years. The tendency has been to increase the term, although the original 12 year term for the Tariff Commission was reduced to 6 years in 1930.

Judging by the letter of the law, Congress intended our regulatory commissions to be manned by officials holding office for a relatively long term. Their appointments were to have no connection with periodic elections. By making the initial appointments on a graduated scale (such as 1-2-3-4-5 year terms respectively for the five original members) Congress intended that vacancies should occur singly and that no President should have an opportunity to pack any commission. The Congressional purpose was to create stable, objective and competent boards removed from the quarrels of partisanship.

As one means of checking the adequacy of the tenure prescribed in the statute, the author sought the opinion of a number of those appointed under these provisions. The past and present members of the I.C.C. consulted were about two to one in favor of a longer tenure of office. Those opposed took the stand that the I.C.C. was not in need of such a safeguard. A member of the Tariff Commission who served during its stormiest years thought that "a longer tenure would make the office more attractive to the proper type of men and would lessen the chances of changing the personnel for political reasons." "I believe that the original provision for a 12 year term is wiser than the present one of 6 years," he stated. "It gave the entire organization more of a character of permanence and contributed to a better morale among the staff. It also prompted a continuity of program which is essential to successful research work."<sup>3</sup>

An appointee cannot be adequately judged until he has served. It takes several years for a man to learn his job and pull his full weight on a commission. The usual statutory term is for six or seven years. Often it is not until near the latter half of this period that a commissioner reaches his greatest capacity for performance and understanding. To let such a man go after five or six years

of service means a distinct loss of experience and a slowing up of the work of the commission until a successor is broken in to his position. Moreover, tenure of office is important in securing proper independence of action, and if sufficiently long will make the office more attractive to the able man who has demonstrated his powers outside the government.

On the other hand, competent officials have been forced to leave the service before the expiration of their terms and while still highly useful, because advancing years and the hazard of not being reappointed indicated the prudence of accepting an outside connection that promised a steadier means of livelihood. The completion of each term means that the commissioner is that much further removed from the practice of his vocation prior to government service, and hence the penalties of severing connection with the commission may be proportionately greater. It is exceedingly difficult for most commissioners to save anything out of their salaries and still maintain the proprieties of official life in Washington.

To banish all thought of the possible reaction of those in high political positions to important decisions touching their interests requires an extraordinary degree of objectivity. As one member of the I.C.C. stated: "One not familiar with the work of the Commission might be surprised at the number of letters and other communications written or given to the Commission or members thereof by those in official life. It is not here to be intimated at all that any such communications are given with bad motives or that they are at all contumacious. Nevertheless, if a commissioner were as far removed from the possibility of 'losing his job' at the end of a term as are the members of the Federal judiciary, it is my own opinion that this would be desirable."

One former commissioner, however, stated that in his opinion whether the term was long or short had little to do with the type of person selected for appointment and that a longer term meant permitting "totally incapable and politically mischievous" persons to hold office longer than they should.

"I have a solution at hand for this problem, which, I believe, is worthy of consideration," an I.C.C. commissioner writes. "Let the initial appointment be for a comparatively short time, say four years, which would be sufficient to carry a reappointment into a succeeding presidential term. Two-thirds of the Senate would be changed. or could be changed, in the meantime. Then, if the



appointee has given a grade of service which warrants reappointment, let the reappointment be made for life or good behavior, with the right to retire at the age of 70, with pay, in the same manner as Federal judges."

The crux of this tenure problem is not to be found in lengthening the term but rather in insuring that the able man who has proved his worth will be kept in office. The commissioner after a few years of service has had an opportunity to make friends and enemies; he has made his position known and his capacities as well. Occasionally an unfit appointee may hide his weakness from general recognition and lean upon his colleagues for support. This is the exception.

Only two of the twenty commissioners consulted advocated a tenure for life or good behavior, although there was general agreement as to the desirability of reappointing the proved man. It is clear that the fault does not lie in the statute. We conclude that an initial appointment of about 4 or 5 years would be wise and that this should be followed by a 12 year term for those who have demonstrated their competence.

#### PARTY AFFILIATION

The common practice is for Congress to prescribe by law that administrative commissions be bi-partisan in their composition. With the establishment of the Civil Service Commission in 1883 the statute provided that not more than two members of this board should be of the same party. As a general practice the ratio is fixed by law to insure that not more than a bare majority of the membership shall be of the same party. It is not specifically prescribed that so many shall be Republicans and so many Democrats. This has made it possible to manipulate appointments in such a perfectly legal way as to secure a commission sympathetic to the Presidential program. For example, toward the end of Hoover's Administration the I.C.C. was composed of 5 Democrats, 5 Republicans and 1 Independent. By the time Roosevelt came to office two vacancies had occurred; there was one less Democrat and one less Republican. The President appointed two Democrats, W. M. W. Splawn and C. Miller. The Commission was thus composed of six Democrats, four Republicans and one Independent.

What of it? Does party allegiance mean anything in the func-

tioning of our commissions? "From any other point of view than that of patronage," one authority writes, "the bi-partisan provision is obsolete and unnecessary. There is no longer need to fear that a dominant party might use the Commission to oppress its rivals. The [Interstate Commerce] Commission often divides on rate and other decisions, but it has never divided along party lines in any decision."<sup>4</sup> The intention of Congress is to be commended inasmuch as the bi-partisan provision seeks to preserve a balance of viewpoints upon the commissions. The implications of the law are unfortunate in that a need is assumed for counterbalancing political loyalties upon boards that are supposed to be scrupulously non-partisan. If a board is under public suspicion as a partisan body then providing for a distribution of its membership between the parties may be an easy way to allay popular fears but it is otherwise of slight practical importance. Nominal party allegiance conveys nothing in itself and our Presidents have been criticized in Congress for the "kind" of Republicans and Democrats they name when selections are made from the opposing party ranks.

It has been charged that Woodrow Wilson appointed the Republican, Victor Murdock, to the Federal Trade Commission because the latter voted for him in the Presidential election of 1916 and that the nominally Republican Costigan was placed on the Tariff Commission for the same reason. Costigan is now a Democrat. William Kent was placed upon the Tariff Commission as a Republican member, although he had supported the Democratic Underwood tariff bill. Kent became a Progressive Republican and served his last term in Congress as an Independent. The appointment of McNinch to the Power Commission by Hoover was criticized by McNinch's fellow Democrats because he had led the anti-Smith forces in his State. It cannot be argued, however, that these appointments were made on purely political grounds because other qualifications were present as well.

It is probably true that our Presidents have appointed more weak candidates from their own particular party than from the opposing party followers. In the two or so cases where an obviously weak appointee of the opposite party has been selected, sectional or class influences have played an important part. It is probably true that in a few cases the bi-partisan provision has re-

<sup>4</sup>Harvey C. Mansfield, *The Lake Cargo Coal Controversy*, Columbia University Press, 1932, p. 145.

lieved the President of consulting his political advisors in the making of appointments and enabled him to follow his best judgment in picking well-qualified men from the opposite political party. Farrell, Mahaffie and McManamy, all Democrats, were promoted from the staff of the I.C.C. to commissionerships by Republican Presidents. "There is a certain irony in the fact, if it be true, that better men are appointed when the President is prevented from naming men of his own party," Mansfield remarks, "Nevertheless, it is among the political independents, irregulars and indifferents that those best qualified to be Interstate Commerce Commissioners are likely to be found. These the President can only appoint, as a practical matter, at the expense of the opposing party, for pressures in his own are usually too strong to permit it."<sup>5</sup> This is a simple and intriguing theory but impossible to prove one way or the other. We have no way of objectively measuring the political orthodoxy of various appointees although many have reached the commissions without engaging in "party politics." And many of these were appointed by a President of their own party. Partisan affiliation is really extraneous to a consideration of those qualifications that bear directly upon an appointee's competence to perform the duties of his office. Nor does it guarantee a balanced commission. Much more important are the social views and economic theories held by the appointees.

Since party means so little in itself, to make it a statutory qualification is to limit the field of choice and arbitrarily to disqualify men otherwise able and willing to serve. Our Presidents have shown their readiness to appoint those whose general views accord with their own. Appointing a man from the opposite party does not necessarily mean importing another point of view. The prescription requiring bi-partisan commissions is the answer given by Congress to those politicians who think that "to the victor belong the spoils." Does it mean anything more than saying that the victor is entitled to just about half of the pelf and no more? It is interesting to find an editorial in a journal of the shippers criticizing the bi-partisan requirement. "What has the political membership of an appointee to do with his work on the commission? If this is a non-political and quasi-judicial tribunal even to raise the question of partisan affiliation is ridiculous."<sup>6</sup>

<sup>5</sup> *Ibid.* p. 190.

<sup>6</sup> *Traffic World*, February 15, 1930, p. 413.

It is contradictory to look upon our independent administrative commissions as non-partisan and then require by law that their membership be bi-partisan. Where a commission has won a reputation for detachment from politics, as in the case of the I.C.C., the qualification is not of much importance. Agencies that do not enjoy this position are, however, benefited in a somewhat indirect way. In its practical effect this bi-partisan requirement goes beyond the commissioners themselves and discourages the influence of patronage in the recruitment of the staff. How effective this has proved is impossible to say. It means, however, that partisans of one party are not without critical colleagues from the opposite camp. A former Republican chairman of the Federal Radio Commission told the writer of appointing two Democrats to the legal staff during a Republican Administration and he described his action as a "most unusual proceeding." Bi-partisan commissions are one weak antidote offered to counteract the spoils-of-office dope pandered by political medicine men. The requirement does not nourish our commissions directly but it does render them less susceptible to the abuses of patronage. The total membership of our commissions is divided very evenly between the two parties.<sup>7</sup>

The temperate conclusions of Commissioner Page on this requirement stress the fact that "other qualifications are much more important than party alignment. Nevertheless, the intent of the provision is good, and if properly interpreted and strongly insisted on by the Senate and the public, it may acquire some restraining influence. For this reason it should be preserved."<sup>8</sup> The point is strongly insisted upon in Senatorial committee hearings. Appointees who have been hesitant or doubtful about their party affiliations have aroused the evident ill-will of committeemen. Senators insist upon knowing whether the appointee is a *good* Democrat or a *good* Republican.

This point was especially stressed when appointees to the Tariff Commission were questioned. Robert L. O'Brien was very emphatic. "I am a Republican protectionist," he told the committee. "I have voted for every Republican presidential candidate beginning with McKinley."<sup>9</sup>

<sup>7</sup> See Appendix A.

<sup>8</sup> T. W. Page, *Making the Tariff*. The Brookings Institution, 1930, p. 189.

<sup>9</sup> Nomination of Robert L. O'Brien and Ira M. Ornburn as Tariff Commissioners, Hearings before the Committee on Finance, U. S. Senate, Seventy-second Congress, First Session, January, 1932, p. 39.

One commissioner made his loyalty very clear to the Committee thus: "I am not a nominal Democrat," Commissioner Dennis said. "I am a regular Democrat. I do not think any member of my immediate family, going back for three generations, was ever a Republican; and I can authenticate my standing as a Democrat by producing a document, if necessary.

"Some years ago a livery stable keeper down in my little town—Pocomoke, Maryland, wrote a will. In that will he provided [*sic*] that democracy with him was a sort of a religion. He named his pallbearers in that will, and he named men who had never under any conditions scratched a Democratic ticket, or who under any possible supposition ever would. The first man named on that list of pallbearers was the late Senator John Walter Smith of Maryland, whom perhaps some of you knew. The second name, I am happy to say was Alfred P. Dennis. So I consider that a certificate of my regularity as a Democrat. That bound me over to rectitude; and if I wanted to vote for a Republican now, I do not feel that in justice to a dead man I could do it."<sup>10</sup>

Some appointees actually produce documents. Mr. Ornburn took great pains to prove that he was a good Democrat. He introduced letters from John W. Davis, Alfred E. Smith, Homer Cummings and other prominent party members. Impatiently one Senator inquired what other qualifications the appointee had besides being a Democrat in good standing. His labor union connections were offered as his other reliance. Several pages of the record were filled with congratulatory telegrams from various trade unions. Mr. Ornburn was for years President of the International Cigar-makers Union.

The appointee offered letters from cigar manufacturers to prove the breadth of his support. One Senator interrupted to inquire what brand of cigar one of these sponsors made. Said the Senator: "My attitude toward him would depend on the quality of his cigars."

"Well, he is making a cigar called the Pippin," responded the appointee, "It sells for five cents. He makes a better grade cigar that sells for ten cents, the Harvard."<sup>11</sup>

<sup>10</sup> Confirmation of members of the U. S. Tariff Commission, Hearings before the Committee on Finance, U. S. Senate, Seventy-first Congress, Third Session, December 1930, pp. 42-43.

<sup>11</sup> Nomination of O'Brien and Ornburn, *op. cit.*, p. 21.

The committee could find no other grounds on which the appointee qualified beyond an incidental concern in the tobacco tariff.

The case of Mr. Ornburn serves to illustrate with exaggerated clearness factors that are very potent in the recruitment of our commissions. Seldom are an appointee's weaknesses as evident as they were in this case. It is obvious from the committee hearings that Mr. Ornburn's grasp of tariff problems was altogether feeble, but he possessed several very pertinent and persuasive qualifications. His party affiliation was unimpeachable, and he had the open support of the Senator from his state and of important labor leaders.

### OCCUPATIONAL QUALIFICATIONS

Is occupational background a factor of importance? In general Congress has not included this factor among the legal requirements, but Senators do question appointees concerning their previous experience.

In appointments to the Federal Reserve Board, occupational background has been the occasion for dispute. Those with banking experience are the men most directly qualified to serve, but bankers by the very nature of their occupation are an essential part of business and often of big business. Accordingly, the champions of the farmer during the agricultural depression around 1920-22 accused the Board of subservience to Wall Street and demanded that the farmer be represented. Bankers and business men were hotly assailed and their right to serve on the Board was challenged. Service by bankers was rendered as unpleasant as their enemies in Congress could make it. The statute was finally amended to require that agricultural interests be represented. As Senator Norris sagely remarked at the time, a mere statutory requirement means nothing in itself since the President could find plenty of farmers as reactionary as any Wall Street banker. Members of the Board did not object to this provision since they felt that it would serve to allay the suspicions of the farmers and calm the political storm. The other commissions with which we are concerned have not had to face this question so directly and they are bound by no legal requirement relating to occupation.

That the question is sometimes considered when appointments are made is well illustrated by the following bit of documentary

evidence. The testimony of William D. Terrell, Chief of the Radio Division of the Department of Commerce, disclosed what happened when two appointments were to be made to the Federal Radio Commission.<sup>12</sup> He states:

There were a number of people recommended for these two vacancies. Some of the letters came to the Secretary of Commerce and some came to me, and some went to the President, and perhaps some went to others, but all of them found their way in the hands of the Secretary of Commerce. The Secretary of Commerce being a comparatively new man, said he thought I had had some experience in radio and perhaps knew some of these men or could get information concerning them, and so he turned those letters over to me and asked me to investigate each one and give him such information as I could concerning them, which I did. When I went over to talk with him about it, he said in his opinion the commission should be rounded out or made a balanced commission, not to be composed of men all lawyers, or all of any one particular class; that he thought inasmuch as the Federal Radio Commission now had two lawyers and one high-standing business man, that it would be well to have two technical men; and it seemed to us that these two men were the outstanding men who could perhaps be persuaded to take the positions.

One of these men was C. M. Jansky, a professor in the electrical engineering department of the University of Minnesota. This appointee had devoted all of his time to the economic and engineering problems of radio communication and had studied questions relating to the design, operation and installation of radio apparatus. But when the Senate committee asked his party affiliation he was unable to classify himself as a Democrat or Republican. Reading between the lines one could see that this made a bad impression upon the Committee. He was not confirmed by the Senate.

The other appointee, Arthur Batcheller, was U. S. Supervisor of the second radio district of the Department of Commerce, a position which he had held for nearly nine years. He had been connected with radio activities in some form for about twenty years.

Various Senators were desirous of keeping the Federal Radio Commission clear of influence by the Department of Commerce. This was doubtless a factor in the rejection of Batcheller's nomination. These cases show that occupational background, however

<sup>12</sup> Nomination of C. M. Jansky, Jr., and Arthur Batcheller. Hearings before the Committee on Interstate Commerce, U. S. Senate, Seventieth Congress, Second Session, February 1929, p. 3.

pertinent to the work of a given Commission, is only one of several important elements that must be considered. Prescribing statutory occupational qualifications would never eliminate the other intangible political considerations. Of course, certain professions provide more direct qualifications than others. The division of the administrative burden within the commission means that one member is chiefly responsible for one type of work while another member superintends another section. The balance of experience within the commission and the kind of technical knowledge that would contribute most to the total competence of any board at a given time should be borne in mind in filling vacancies. Needs of this sort make it all the more imperative that the President be not unduly restricted in making his selections by extraneous considerations of class or of party. Any hard and fast rule written into the statute and requiring that particular occupations or economic classes be represented would do more harm than good. A balanced Commission is desirable but the factors to be thrown into the scales cannot be anticipated and hence can not be specifically prescribed by law. Occupation is a very crude indication of a man's social philosophy and it is a balance of viewpoints and experience that is sought rather than a balance of vocations.

#### SECTIONAL DISTRIBUTION

Title 12 of the Federal Reserve Act states that appointments shall be made with "due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country."

This statutory provision combines the question of the geographical distribution of appointees with the representation of occupational groups.

Formal legal requirements that a commission be composed of men selected from certain definite sections of the country unduly restricts the President's freedom of choice. The statute authorizing the Federal Radio Commission held that each member should be "an actual resident citizen of a State within the zone from which appointed at the time of said appointment." The country was divided into five zones and a commissioner was to come from each zone. The composition of the Radio Commission simply aggravated sectional rivalries. Even where the law contains no more than a general admonition, as in the case of the Federal Reserve



Board, difficulties may arise. "For some reason it appeared to be difficult during the last half of 1918 and the first half of 1919 to induce properly qualified men of the Central West to accept membership on the Federal Reserve Board," W. P. G. Harding writes, "I am told a tender of appointments was made to more than a half dozen men before it was finally accepted by Mr. Moehlenpah."<sup>13</sup>

The well-established custom of preserving a distribution of appointments over the country makes legal requirements unnecessary. This is borne out by classifying the 143 commissioners according to the state from which they were appointed. Only 16 states have more than 3 commissioners to their credit and only 8 can claim more than 4 appointments in the history of these commissions. Forty-two states are represented although 12 states have given only one commissioner to the federal service. New York leads, as might be expected, with an honor roll of 16 commissioners, Iowa and Massachusetts are next with 8 each, Illinois with 7, California and Wisconsin with 6 each. It is not surprising to find that the states from which no commissioners have come are Nevada, South Dakota, New Mexico, Arizona, Delaware and Montana.<sup>14</sup>

The representation of regions should never be recognized as a formal factor in the fixing of qualifications. As a practical matter the issue can not always be avoided, but certainly it should be given no statutory sanction. In 1926 Senator Smith of South Carolina introduced a bill (later favorably reported by the Committee on Interstate Commerce) to require that the membership of the I.C.C. be increased to 13 and the members appointed from different parts of the country. This bill was opposed by organizations such as the Railway Business Association on the ground that such sectional representation would destroy the judicial character of the Commission. This same organization urged that the selection of commissioners be made without regard to section, interest, or occupation and simply on the basis of personal calibre.<sup>15</sup>

It is obvious that a tribunal of a size appropriate for the performance of executive and judicial duties can not adequately

<sup>13</sup> *The Formative Period of the Federal Reserve System*, Houghton Mifflin, 1925, p. 130.

<sup>14</sup> See Appendix B.

<sup>15</sup> *Traffic World*, May 7, 1927, p. 1197.

represent regions or occupations. To increase the size to satisfy such demands would be to create a body too unwieldy to perform the primary function of regulation. To make membership on the commission the prize of certain regions or classes is to open the door to log-rolling and bargaining. On the other hand, many of the most vital and profound differences with which our commissions have to deal are based upon economic rivalries. These disagreements are more important than mere partisan differences. Since these regulatory bodies are federal boards and concerned with interstate relations, a general evenness in the geographical distribution of appointments may be desirable not so much for its effect upon the internal functioning of the commission itself, as for the increased confidence it may give the public. This is a very moot point, however. Strictly speaking, section has no more to do with proper qualifications than party loyalty or religious affiliation. To require that commissioners be appointed from certain zones is to restrict needlessly the choice of appointees and to place an obstacle in the best development of our commission membership.

There is one aspect of this sectional distribution that deserves consideration. In reading the Senate hearings one gets the impression that some Senators regard the sectional distribution of appointments not simply as another means of insuring their share of patronage, but also as a way of maintaining democracy in administration. They do not want a President to build up his own coterie of officials. They wish to insure a wide distribution of appointments. Statutory provisions creating zones are an awkward device for securing a defensible goal.

Legal domicile can mean very little in actual practice. Senators have expressed dissatisfaction with the way in which the residence requirement has been interpreted. Worthy of note is their desire to bring men into the federal administration who are not too closely joined with the Washington bureaucracy. Speaking of the appointment of members of the Federal Radio Commission, Senator Dill said:

We wanted to make it impossible to pick men who were then with the Department of Commerce or with other departments of the Government and to make it so that the President would be compelled to select from the various states outside the District of Columbia.<sup>16</sup>

<sup>16</sup> Federal Radio Commissioners, Hearings Before the Committee on Interstate Commerce, U. S. Senate, Seventieth Congress, First Session, January, 1928, p. 5.

The President should search widely for his appointees. Men in every section should feel that their region will not be overlooked in the recruitment of federal administrators. If our figures on sectional distribution mean anything they certainly prove that there is little need for legal requirements to secure a broad geographical distribution of appointees.

In general the statutory requirements reflect the desire of Congress to maintain commissions that are not identified with any one class, party or section. Making positive provisions for a balance of these factors has caused trouble. Political influence upon the appointing power and direct scrutiny of appointees at committee hearings provide more flexible and effective ways of guarding the commissions than laying down hard and fast requirements. Senators can bring out the pertinent qualifications or the essential weaknesses of appointees. Their criticism is a better safeguard than a detailed statute. The party qualification means little in itself and a sectional distribution of appointments is not dependent upon law. The tenure prescribed by statute should authorize a short probationary appointment and then a long reappointment for the able men.

There is another general qualification that is reiterated in our statutes and that raises questions unanswerable except in terms of actual experience. The implications of this legal requirement we shall examine in the next chapter.

## CHAPTER III

### THE BUSINESS MAN IN ADMINISTRATION

SEBASTIAN: *His counsel now might do me golden service.*

TWELFTH NIGHT

The Federal Reserve Act provides that before a member can enter upon his duties he must resign office in any bank or trust company and hold no stock in any banking institution or trust company. Similar restrictions are provided for by statute in connection with the other regulatory bodies. Take, for example, Title 16 of the U. S. Code relating to the Federal Power Commission:

No person in the employ of or holding any official relation to any licenses, or to any person, firm, association, or corporation engaged in the generation, transmission, distribution, or sale of power, or owning stock or bonds thereof, or who is in any way pecuniarily interested therein, shall enter upon the duties of or hold the office of commissioner.<sup>1</sup>

Commissioner Page comments very cogently on the statutory provision in the tariff act under which "no member shall engage actively in any other business, function, or employment." He states:

Newspaper men, college professors, retired politicians and the like frequently make excellent public officials, and others can be found through a proper system of promotion within the government service. It is against common sense, however, to limit the President's selection to these classes and shut him out from the field of important business affairs and the more exacting and highly paid professions; and yet this is just what the present restriction does. Men of training, maturity of judgment, vigor and experience have commonly assumed some obligation toward their employment of which they cannot immediately and completely divest themselves. However willing they may be to make personal sacrifices in order to render a useful public service, they have responsibilities toward their associates from which an abrupt and absolute withdrawal is impossible. It is on this ground that appointments to the Tariff Commission have been again and again refused by men peculiarly well qualified for the position."<sup>2</sup>

To what extent do these restrictions serve to disqualify able men who have made their mark in the business world? It is obvi-

<sup>1</sup> Code Supplement, Title 16, §792.

<sup>2</sup> T. W. Page, *Making the Tariff*, p. 190.

ous that for many men of affairs a complete severance of their business ties would entail a degree of personal sacrifice that the prestige of governmental service cannot counterbalance. As a result successful American business men have played little part in the commissions that mean so much to business. We have no way of knowing in exactly how many cases such men were invited to join these regulatory commissions and refused to do so. The former secretary of President Coolidge told the writer of the frequent reluctance encountered among business leaders when they were asked to serve on Federal commissions. It was found that men of importance in commercial life were unwilling to make the very material sacrifices involved in cutting their connections and coming to Washington to fill a position that was of uncertain duration because of political hazards. The President was not able to put his first, his second, or even his third preferences upon the commissions in some cases.

Governmental relations with industry demand increasingly that men capable of meeting business men on their own ground and of understanding the intricacies of public utility management be placed upon our federal regulatory commissions. Appointing business men may or may not answer the need. Industrialists may not be aware of these necessary business factors. Granted, however, that broad-gauge business men, successful and well-informed, would introduce a desirable viewpoint, could such men be persuaded to serve the government? When we turn to examine the records of the officials charged with these important duties our findings are not reassuring. The federal agencies selected for this study are those most closely concerned with regulating the activities of the business man. Yet how many business men have participated in this administrative work? Those whose primary interest has been devoted to the conduct of their own business have been very few indeed.

On the Interstate Commerce Commission only three or four members have ever been engaged in business prior to their appointment. None of these men gave their time exclusively to business. No important railroad executives have served on the Interstate Commerce Commission, no heads of large corporations on the Federal Trade Commission, only one manufacturer or importer on the Tariff Commission, no electrical industry magnate on the Federal Power Commission, and on the Securities and

Exchange Commission one broker who resigned, however, after a brief service. While the now defunct Radio Commission had three members formerly associated with the radio business in some fashion, the Communications Board retains only one. The single exception is the Federal Reserve Board. It is essentially a board of bankers. The statute establishing the Board practically dictates that its members be recruited from this occupational group. Bankers seem most likely to possess the expertness and experience needed in administering the federal reserve system. In the case of the commissions directly charged with regulating transportation, trading in securities, business practices, communications and certain power companies, commissioners with direct practical experience in the conduct of such businesses are conspicuously absent.

To inquire into the business experience of the members of the Federal Trade Commission seems especially pertinent, since this agency is charged with preventing "unfair trade practices." Not more than two men active in the business world have been associated with this commission since its creation in 1914. The total months of service for the two were forty-five. W. H. Parry was an editor and publisher of newspapers in Oregon for 10 years and treasurer and manager of a Seattle shipbuilding company for 15. He was associated with the Seattle Chamber of Commerce for two decades. E. N. Hurley engaged in farming and manufacturing and went as a trade commissioner to Latin America. He was president of the Hurley Machine Company and of the First National Bank of Wheaton, Illinois. His important business connections date from the years after he left the commission.

W. J. Harris organized a fire insurance company in Atlanta and a bank in Cedartown. C. H. March was a lawyer but he also engaged in banking. C. W. Hunt served as secretary to a farmers' mutual fire insurance association for 16 years after 10 years of school teaching. This experience scarcely qualifies these individuals as important business men.

An examination of the biographies of Federal Trade commissioners brings one writer to the conclusion that these individuals have been "men of character and importance, but of 'local' character and 'local' importance, not men obviously qualified—as members of the Trade Commission should be qualified—by inclination, by long and specialized experience, by unquestioned mastery and standing in business, economics and law, to deal

effectively with, and to promote the expeditious disposition of the many highly complicated questions of nation-wide public and business policy that come before the Commission from day to day."<sup>3</sup>

This appraisal seems just in so far as it touches the business experience of the commissioners. Although little of the knowledge gained from direct participation in industry and commerce was brought to the commission, it does not follow that the viewpoint of the business man has lacked for spokesmen. W. E. Humphrey was a lawyer and a member of Congress before coming to the commission, but throughout his career, he was opposed to governmental "interference" in business and he brought several of his colleagues to pursue a lenient policy of regulation toward business. His reappointment was challenged in Congress on the ground that he had been unduly favorable to some large cottonseed oil manufacturers who were monopolizing the industry. Hunt's reappointment was opposed by certain Progressive Senators because he had consistently followed Humphrey's leadership in "favoring big business." Commissioners of this type, however, may defeat the very end for which their commission is created. There is no need of spokesmen for business. Industrialists take care of that.

The problem is not one of representing the demands of business men. Lawyers are numerous on our commissions and the legal profession is largely engaged in fighting the battles of business. Our quest is for men who by training and experience understand the methods and values of the business world. The government needs on its side ex-business executives who can devise means of coping with industry in an effective and efficient way. For example, in the regulation of public utilities it is essential to consider questions of valuation and rate making. This subject has legal, accounting and engineering aspects. But problems of marketing and business management also pertain, though lawyers and technicians are inclined to disregard them.<sup>4</sup> There is no justification for representing the immediate and selfish interests of business men or of any other class, but there is need for considering the commercial aspects of public utility management. The men

<sup>3</sup> M. Handler, ed., *The Federal Anti-Trust Laws* (Chicago, 1932), quoted in report of the Royal Commission on Price Spreads, 1935, p. 255.

<sup>4</sup> See C. O. Ruggles, "Some Aspects of Public Utility Rate Making," *Harvard Business Review*, July, 1935.

best qualified to understand such problems are business men of intelligence who combine vision with experience. Such men are not found on our regulatory commissions. They are rare enough in the commercial world and the salaries they command exceed anything offered by the government. The contribution that men of affairs can bring to our commissions is strikingly illustrated in Joseph P. Kennedy's work on the Securities and Exchange Commission. This appointee spoke the language of Wall Street. He understood the complexities of stock manipulation like the successful trader that he was. He proved his talent and shrewdness by piling up a large fortune while still in his thirties. His fellows knew that they had little chance of outmanoeuvring Kennedy in his enforcement of the law. The brokerage fraternity, aggrieved and even frightened by the terms of the statute, were reassured by the appointment of Kennedy. They knew that their game would not be ruined although the rules might be revised and strictly interpreted.

A Kennedy is a rarity. Such men seldom serve and never for long. Our experience with business men as members of regulatory commissions has been sufficient to indicate their possible usefulness, but too limited for any substantial contribution from them. Why is this?

Commissioner Caldwell told a Senate Committee that in his opinion the statutory provision providing that members of the Federal Radio Commission should not be financially interested in the radio industry was a very serious obstacle in getting competent and experienced men to serve the government. "I am told that some 20 men have been offered the vacant commissionership and have refused," he stated.

COMMISSIONER CALDWELL. If competent men could be found who have private fortunes to come down here and help do this job, I would pick those men first. But I doubt very much that competent men will give up their connections.

SENATOR DILL. But do you still think that a man who has a financial connection with the radio business, either in broadcasting or manufacturing, should be a member of the Federal Radio Commission? That is, do you think that the law should be amended so that that requirement would be no longer in effect?

COMMISSIONER CALDWELL. I feel that it would be unfair to apply that provision to all members of the commission; yes, Sir.

SENATOR DILL. I am thinking of the public. Do you think it is in the public interest that that provision should be stricken from the law?



COMMISSIONER CALDWELL. I believe it would make for a better radio commission. I feel that way about it.<sup>5</sup>

When a man divests himself of his holdings he does not at the same time discard his sympathies and prejudices. Is there much point in insisting upon an external form when the spirit cannot be touched? Moreover, the element of financial sacrifice cannot be disregarded.

W. P. G. Harding was president of the largest bank in the State of Alabama when called upon to serve on the Federal Reserve Board. His interests for about 50 years were associated with his home community. The law required that he sever all connection with private banking. Breaking these ties and engaging in public service meant a sacrifice that was not to be measured simply in monetary terms. The \$12,000 salary was "not attractive" but his friends urged that he accept "because of the honor and prestige of the office." President Wilson pointed to the "opportunity to serve the country." He wrote: "I hope sincerely that you will feel that you can make the sacrifice necessary to accept."<sup>6</sup>

Commissioner Caldwell disclosed in his testimony before a Senate Committee a unique way of avoiding such financial sacrifice. "I have spent this year over \$18,000 for my personal expenses and those of my family, in addition to which I have been put to great personal loss in moving down here to Washington," he said.

SENATOR WHEELER. Well, that is all right, but I cannot understand why this McGraw-Hill Publishing Company should make you a donation of \$7,000 a year as a gratuity while you are serving on the Federal Radio Commission.

COMMISSIONER CALDWELL. Simply because I went to the McGraw-Hill Company and presented to them frankly the whole situation, that I could not afford to accept this position at \$10,000 a year, and yet here was afforded an opportunity for public service, and if such an arrangement could be made I would agree to go back to them; and they felt that that was a real opportunity for public service on their part, and on mine also, and they agreed to the arrangement.

SENATOR COUZENS. Senator Wheeler, let me ask you: What differences is there between this arrangement made by the McGraw-Hill Company to get back the services of one of their men at the end of his term for the Government, and a lawyer accepting a retainer while he is serving as a Senator in the Congress of the United States?<sup>7</sup>

<sup>5</sup> Confirmation of Federal Radio Commissioners, Hearings before the Committee on Interstate Commerce, U. S. Senate, Seventieth Congress, First session, January, 1928, p. 159.

<sup>6</sup> W. P. G. Harding, *Formative Period of the Federal Reserve System*, pp. 2-3.

<sup>7</sup> Confirmation of Federal Radio Commissioners, pp. 156-157.

A very acrimonious argument followed; the Senators could not agree among themselves as to the propriety of Commissioner Caldwell's arrangement.

The conscience of the individual is a better safeguard for insuring detachment than a statutory clause of a purely formal sort. In only one case has the interpretation of such a clause become a matter of general public dispute. In December, 1923, Commissioner Costigan officially requested President Coolidge "on legal and moral grounds" to prevent Commissioner Glassie from voting and taking part in the sugar investigation of the Tariff Commission on the ground that certain family holdings in the sugar industry disqualified him from acting impartially. Costigan states:

Instead, President Coolidge supported Commissioner Glassie's contention with the weight of his powerful office, and Commissioner Glassie, though in January 1924 his participation was publicly challenged by me with the concurrence of Commissioners Lewis and Culbertson, continued to act in that investigation until Congress in the spring of that year, by a special enactment, effectively rebuked him and his Commission supporters—Commissioners Marvin and Burgess—and terminated the practice.<sup>8</sup>

This point was played up because of a deep-seated political disagreement among the commissioners as to the character and function of the Tariff Commission. The question of propriety cloaked a matter of policy. Glassie has constantly taken a different view and in a recent memorandum to the writer states:

The idea was studiously spread abroad by certain members of the Commission and by certain politicians that I had a personal interest in the industry under investigation by reason of my wife's ownership of stock in a sugar plantation. In point of fact, this interest was such that the gross return received by Mrs. Glassie from the time of our marriage to the time of the controversy (1907-1924) did not aggregate more than \$200 a year derived from stock representing her share in the estate of her father, the late Senator Donelson Caffery of Louisiana. The company itself (The Columbia Sugar Company) was a family corporation organized to operate the plantation and one-half of the stock was owned by one of her brothers, a majority of the other half by another brother and the rest divided among the other children, an army officer, a consular officer and two women. However others may have looked upon it, it was impossible for Mrs. Glassie or myself to consider this trifling interest of hers as a real interest of mine in the sugar industry.

Although this seems like a tempest in a teapot today, it was

<sup>8</sup> From Costigan's letter to Senator Robinson quoted in *Congressional Record*, 70th Congress, 1st Session, pp. 4733-5.

bitter brew at the time and prevented Glassie's further service on the Commission.

The statutory provisions relating to an official participation in outside activities were used as a political bludgeon over the head of one member of the Tariff Commission. Accusations were made that W. S. Culbertson was neglecting his duties and infringing the law by delivering a series of evening lectures at Georgetown University. It was openly charged that unless he fell in with the Administration's tariff policy his lecturing would be cited against him as an infraction of the statute.<sup>9</sup> Nothing came of these threats, but these provisions suggested a means of coercing an official. They may thus induce positive evils. Their negative or deterrent effect cannot be easily proven by specific references, though the striking absence of business men in these offices is eloquent testimony. Commissioner Page has wisely suggested that the law be amended thus: "No member shall engage in an occupation that will prevent him from performing the duties of his office." Even this provision is really superfluous, he states, "since the incumbent can under the law be removed by the President for inefficiency, neglect of duty or malfeasance in office."<sup>10</sup>

No man of integrity who possesses the training and ability to serve should be disqualified because of his class or occupation. Yet as a matter of practice, business men may be called upon under our present statutes to make a monetary sacrifice which undoubtedly discourages them from serving. Our point here is simply to raise the question as to the effect such statutory restrictions may have upon those who might otherwise have much to contribute to the commissions. If it is undesirable to represent economic classes and sections, is it not also questionable virtually to disqualify certain occupations by requiring that an unduly high price be paid for the privilege of service?

The statute attacks with a clumsy broadside a problem that calls for a more incisive consideration. Business affiliations may clearly disqualify an appointee for service where these activities have induced definite prejudices. For example, Commissioner Burgess was engaged for years in the manufacture and exporting of pottery. One of his tasks as an officer of his trade association

<sup>9</sup> Hearings before the Select Committee on Investigation of the Tariff Commission, United States Senate, Sixty-ninth Congress, First Session, Part Three, p. 303ff.

<sup>10</sup> T. W. Page, *Making the Tariff in the United States*, p. 191.

was to lobby for favorable tariffs. Commissioner Marvin was for years secretary of the Home Market Club of Boston. It is no reflection on the integrity of these men to say that their previous activities were not conducive to a judicial and scientific approach to tariff questions. Their views on "protection" had crystallized years before they entered upon their official duties. Criticism should not be directed toward these men as individuals but rather toward the President who selected them.

Statutory provisions have undoubtedly discouraged some business men from accepting federal posts. They have been unwilling to face the monetary sacrifice. Even abolishing the requirements that a man divest himself of all business ties would still leave other substantial obstacles. The mental attitude of business men toward government service must be reckoned with.

The viewpoint expressed by Paul Warburg before the Commercial Club of Chicago in 1917 is an interesting commentary on our problem although it can scarcely be said that his words have carried much weight in the period that has elapsed.

Business men must feel toward these boards as lawyers do toward the Supreme Court. Just as any lawyer might be expected to give up a highly remunerative practice in order to accept a call to the Supreme Bench, so the government must feel that it is entitled to ask the best business minds to serve on a supreme bench, if you please, of transportation, banking or trade. It is true that being a member of these boards entails sacrifices of a material kind, and, what is more, of a personal nature; but if in England, France and Germany the flower of the nation always stands ready to serve its government, why should our country find its citizens less ready to follow its call?<sup>11</sup>

Unfortunately in this country we have often delayed calling the flower of the nation into the administration until it is nearly ready to go to seed. Men can hardly be expected to embrace the public service just when their efforts are bearing fruit in private walks of life.

Unless men can be brought to see the possibilities for a lifetime of work on these administrative tribunals, little progress is possible. An example of a prevalent attitude was the reaction of E. W. Decker, president of the North West National Bank when approached by a personal emissary of President Wilson and offered a position on the Federal Reserve Board. He declined.

<sup>11</sup> Vol. II, *The Federal Reserve System*, p. 495.

Commenting on the invitation, he said: "Had I been an older man I should have taken the offer in a minute because I consider it one of the greatest honors which could be conferred upon a Republican by a Democratic President."<sup>12</sup> Appointment to our administrative commissions must be regarded not merely as an honor for leading citizens or enterprising politicians, but rather as an opportunity for a career of important public service. Membership is a job as well as a distinction.

During the boom years many business men were not only unwilling to undertake public service; they were also dubious about the validity of the concepts upon which the regulatory commissions were based. During the Coolidge era the attitude of those in command of business and government was to let well enough alone. The government was not expected to play an active part in the economic life of the nation. Prior to the present Roosevelt Administration a different public attitude prevailed with regard to serving the federal government. A distrust of the validity of governmental interference in business persists among industrialists.

The nature of the governmental work itself is a consideration of consequence in explaining the attitude of business men. When the Radio Commission was established three men active in the broadcasting industry were appointed. Two of them left after a brief service.

One states:

I was more or less drafted as a member of the Radio Commission when it was originally formed with the definite understanding that I would have to serve only through the period of the preliminary work. (Personal letter)

This is one of several notable instances where men of outstanding qualifications have been called upon to get a newly-created Commission properly organized and smoothly functioning before they withdrew.

Another writes:

I originally went to Washington intending to stay only a few months in order to complete the technical requirements of eliminating the interference which had formerly existed. As soon as the technical job was completed and the work of the Commission became merely routine, I preferred to retire and to return to the publishing field. (Personal letter)

<sup>12</sup> *The National Banker*, p. 9, August, 1914.

These comments suggest an attitude toward governmental service that may be of great influence in the manning of our commissions. When the task is fresh and challenging it is attractive to the men of imagination and enterprise who are exploring and developing their specialty outside the government. In the heavy daily task of administering the law there is little to hold such men. The relation between the temperament of the man and the character of the job must be borne in mind when seeking the reasons as to why men resign. When to this is added financial loss it becomes only too clear why business men have taken little direct part in the weighty task of regulating business activities. Only in a few cases have we been able to recruit competent commissioners from this important class.

The *élite* under our system has been determined largely in accordance with economic standards. Money has been the general criterion for judging success. There are, of course, many exceptions to this statement. But certainly the general incentive for achievement in our society has been the attainment of wealth. Countries with an aristocratic tradition have introduced other goals such as titles, orders and admittance to a "noble class." Ideals of public service and *noblesse oblige* have distinguished such societies at their best. The standards of this aristocratic class gave the general tone to government. One product of this tradition was an administrative service in part recruited from this class and in general dominated by its ideals.

The British Civil Service has been drawn from the upper middle class and from the aristocracy. The methods and standards of recruitment were designed, whether consciously or not, to draw off the best of the talent in the two great universities which were traditionally the training-schools of the dominant economic and social classes. The government service was the private preserve of the upper classes. Civil service reform in Great Britain meant that henceforth only the abler members of this class would find a place on the government payroll.

This may be a slight oversimplification of the British situation, but it is merely introduced here by way of focusing the problem that confronts the United States. Our social structure has not been geared so as to draw off the most capable men for government service. Can we change gears? The present arrangement encourages one type of appointee and discourages another. This

has been an incidental effect of the effort to secure men who will be detached. Certainly it is desirable to seek such men but objectivity is not everything. We need men of brains, of practical experience and of public spirit. Is it essential to all these purposes that an appointee divest himself of his financial holdings related to the interests coming under the jurisdiction of his bureau?

The Senate at least might be reserved the privilege of deciding whether or not the capacity and experience of an appointee outweighed his financial connections. In this country we have succeeded in drawing into our public administrative services very little of that organizing ability that has directed our industrial order at its best. The monetary rewards have not been adequate nor has the scope of government activities been such as to attract the best talents. Today the importance, if not the pay, of administrative work has so increased that it offers a challenge of men of ability. It is quite possible that some of the vigor and intellect that has found its outlet in industry may be deflected to the administrative work of government. To align men of industrial experience with the government in the task of business regulation would greatly strengthen our commissions. One or two such men on each board would make these commissions more balanced and better armed to face all comers. This point becomes clear if we examine the past occupational and educational backgrounds of our commissioners.<sup>13</sup>

<sup>13</sup> For a discussion of the social origins of American business men, see F. W. Taussig and C. S. Joslyn, *American Business Leaders*, Macmillan, 1932.

## CHAPTER IV

### EDUCATIONAL AND OCCUPATIONAL BACKGROUND

LEAR: *What services canst thou do?*

KENT: *I can keep honest counsel, ride, run, mar a curious tale in telling it, and deliver a plain message bluntly: that which ordinary men are fit for, I am qualified in: and the best of me is diligence.*

KING LEAR

Congress has not established positive requirements for membership on federal regulatory commissions. Attention has been focused upon the prevention of abuses. The result has been a restriction of the President's field of selection and the discouragement of business men with large financial holdings.

What kind of men have served as commissioners? This broad query can be answered only by considering certain topics relating to the education, occupation and general experience of these officials. In general no uniform background can be found. This is in itself significant. No clear ties of an economic or social variety point to the development of a bureaucratic class. Very broadly viewed our commissioners are for the most part professional men. Their training has been legal and academic rather than technical. Much more likely than not they have participated in politics and held minor public office. They have seldom been chiefly concerned in running for major elective offices. They have taken some interest in their political parties, but this has often been an activity of a rather incidental sort. The party hack is very rare; the lawyer, educator, journalist, and banker is more usual.

Sufficient data on the educational background of the commissioners has been compiled to warrant some generalizations.<sup>1</sup> Most outstanding is the variety of educational experience. The extremes stress the great unevenness in the formal training of the men who have come to our commissions. E. I. Lewis, who served on the I.C.C. for over a decade, left school after two years and became a printer's devil at eleven years of age. Henry P. Fletcher was taught by private tutors. George Rublee went from Groton to Harvard College and then to the Harvard Law School.

<sup>1</sup> See Appendix C.



One hundred twenty-six commissioners attended public high schools. Only 11 men were educated at private academies and the select private preparatory schools are conspicuously absent. Clearly there is no counterpart to the path trodden by British statesmen from the few great English "public" schools to Oxford and Cambridge and thence to the public service.

Reviewing the significance of training at Oxford and Cambridge in the careers of British statesmen, Laski states that these institutions mean little "in the sense that the art of government can be acquired there. But in the sense that they open avenues more easily for those not of the aristocracy, the claim is not to be denied. They are an integral part of that government by connection which is still influential in England."<sup>2</sup> No similar common meeting ground exists in this country.

Laski found that of the 306 persons who served in the British Cabinet from 1801 to 1924, 118 were educated at Oxford and 81 at Cambridge. In the case of our 143 federal commissioners the contrast is great. Only 5 universities had more than 2 graduates who became commissioners. The University of Michigan educated 3 commissioners, the University of Wisconsin 4, Yale 5, Princeton 7, and Harvard 11. To list the colleges attended by the other commissioners is to display a cross section of American educational institutions.

The following state universities can claim one and sometimes two commissioners as alumni: Georgia, Texas, California, Kentucky, Tennessee, Idaho, Nebraska, Virginia, North Dakota, Mississippi, Indiana, Kansas Agricultural and Alabama. Two each attended the University of Chicago and the City College of New York. We can balance against these institutions a variety of privately-endowed colleges: DePauw, Tulane, Brown, Washington and Lee, Cornell, Colby, Purdue, St. Johns, Columbia, Georgetown, Wabash, Johns Hopkins, Duke, Dartmouth, Wesleyan and Amherst. In almost all cases these colleges did not contribute more than one commissioner of the 143 studied.

While it is impossible to find standards for indicating the social and traditional backgrounds of the commissioners, some inklings may perhaps be obtained by considering this list of colleges. It suggests at least something of the varied influences to which they were subjected.

<sup>2</sup> H. J. Laski, "The Personnel of the English Cabinet, 1801-1924," *The American Political Science Review*, February, 1928, pp. 29-30.

As varied as the list of colleges is the diversity of educational experience on the part of these commissioners. Here is evidence of the remarkable degree of fluidity of our educational process—system it is not. Charles D. Mahaffie of the I.C.C. received his A.B. in 1905 at Kingfisher College, Oklahoma, and his B.C.L. after three years as a Rhodes Scholar at Oxford. Balthasar H. Meyer graduated from the Oshkosh Normal School in 1893, studied a year at the University of Berlin and received his Ph.D. from the University of Wisconsin in 1894. Walter M. W. Splawn went on from Decatur College and Baylor University to receive his M.A. at Yale and a Ph.D. from the University of Chicago. There is no general pattern that characterizes the training of these public servants. They progress from obscure colleges to the great universities of the world as they work their way forward toward a broader cultural equipment.

Despite the great facilities for university education offered by the states, more of the commissioners were trained in the privately-endowed colleges than in public institutions. In fact only 26 are listed as having attended city or state colleges and universities, 4 went to normal schools, 4 to the Naval or Military Academy and 18 to state or city law schools. More than 70 of the commissioners received their education in whole or in part at privately endowed institutions of higher education.

Since the establishment of the I.C.C., 43 commissioners have served or are now serving. Information could be obtained on the educational background of 41. Of these, 27 attended college although 6 did not receive a degree.

Of the 24 Federal Trade Commissioners from the beginning to January, 1935, 15 went to college and 8 received degrees. Of the 21 members of the Federal Reserve Board, data were found for 20; of these 15 went to college and 10 were awarded their degrees. Of the 23 Tariff Commissioners past and present all but 7 were awarded college degrees. Most of the Federal Radio Commissioners had either college experience or training at the U. S. Naval or Military Academy. Two were educated at normal schools. The appointees to the two new agencies, the Securities and Exchange Commission and the Federal Communications Commission, are, with one exception, "college men." Of the present members of the I.C.C. all except two have received some college training.

These cases are indicative of the increasing importance of col-

lege training in government service. It is to be expected that with the greater number of university graduates generally available, a larger proportion will find their way to the commissions. That many of these men were not awarded degrees is no sign of stupidity or carelessness. One gets the impression from looking over their individual records that college years often were cut short in order to hasten on to law school or into politics or journalism or business.

Evidence of advanced formal education is found in the fact that 21 commissioners took degrees for graduate study and of these twelve received the doctorate of philosophy. The first Ph.D. to be appointed was B. H. Meyer, named by President Taft to the I.C.C. in 1910. The Tariff Commission has had the largest percentage of commissioners of advanced academic training. Of the 23 men who have served as commissioners, 6 held Ph.D. degrees. On the other hand, the only commissioner lacking any formal education was David J. Lewis who held office on this body for nearly eight years. Landis of the Securities and Exchange Commission is the only Doctor of Jurisprudence on the commissions.

Scholars have been of great influence in the work of the commissions. Those men who have attained a thorough grasp of their field through prolonged study have exercised a tremendous influence upon their boards. The most notable case is that of Commissioner Cooley. His scholarly reputation has lived after him. He was a judge on the supreme court of Michigan for many years and professor of law at the state university from 1859 to 1884. He compiled several learned treatises and contributed many scholarly articles on legal subjects. His books on torts and on constitutional limitations were outstanding. He combined, in remarkable degree, true learning and valuable public service. His qualifications while extraordinary are not without parallel among our commissioners. Several of our Tariff Commissioners stand out as examples of men who have been able to turn their academic training to government service with excellent effect. The records of F. W. Taussig, A. P. Dennis and T. W. Page show what is possible. Their training contributed directly to their official achievements.

The attraction of government work to academic men is strong. Edgar Brossard was teaching at the Utah Agricultural College when the President of the institution received a telegram from

Washington asking that an expert on sugar beet costs be suggested. Brossard was just beginning a year's leave of absence. He states: "President Peterson called me into his office and showed me this telegram and asked me what I thought about it; if I wanted to go. I said, 'Well, I had my plans all made to go to Harvard, but this sounds like as good an investigation as anything at Harvard University or any place else. It looks like as good an opportunity to do a piece of research work, the very thing I was going to Harvard to do.'"<sup>3</sup>

In this case neither money nor position was the attraction. The pay was meager and the employment was for only three months. The work itself was enough to cause the research man to change his plans. He started on the staff and was later made a Commissioner. Mr. Coulter prior to his appointment as Tariff Commissioner was the Chief Economist on the Commission. The work was agreeable and the prospect of a steady tenure was pleasing. At a sacrifice in salary he had resigned his presidency of the State College of North Dakota to undertake this governmental work. When Mr. Newton, President Hoover's secretary, approached Mr. Coulter concerning a Commissionership, the latter although fearful of the uncertainties of a political appointment nevertheless accepted the promotion.

The capacity for and the habit of study is one qualification of prime importance. It is a characteristic of the most successful administrators of long service. Joseph Eastman is an outstanding example. His routine is a long walk to his office from his simple two-story dwelling near Rock Creek Park, a day at the I.C.C., a game of squash in the late afternoon and an evening of reading and study at his office. It is said that no other commissioner on the I.C.C. is so well known to the night-watchman as Eastman. The railroad interests recognize in this commissioner a mind "that will consider every angle of their case; a mind that has become a railroad authority because of its love of the work. They know that Mr. Eastman relies less on his examiners than almost any other commissioner; that he will read the material submitted to him, and that, if not decided in their favor, the whole matter will at least be aired. Mr. Eastman's grasp of railroad problems is

<sup>3</sup> Confirmation of Members of Tariff Commission. Hearings before the Committee on Finance, U. S. Senate, Seventy-First Congress, Third Session, December, 1930, p. 153.

indisputable. One has only to refer to the court records of any of a hundred cases, where the Eastman cross-examination, conducted largely from his memory of the figures and facts, rips great holes in the testimony of the distinguished witnesses.”<sup>4</sup>

It is the mind that can grasp the essential facts of a tangled situation and think through to the core of the problem that is of so much value in commission work. An intellect trained in hard abstract thinking can soon master the technicalities of practical problems. This seems to have been the case with Landis on the Securities and Exchange Commission. Although suspect by business as another “brain-truster,” this erstwhile law professor has won the respect of Wall Street. When Mr. Landis succeeded to Kennedy’s position as chairman of the SEC he was greeted thus by an important financial journal: “A scholar with a broad background, he has during the past year or two had opportunity to learn a great deal about the technical aspects of the securities market. Responsibility seems, moreover, to have steadied him in his appraisal of many practical work-a-day problems. He takes up his new duties with the good-will of the financial community, which ought to be of considerable assistance to him in meeting the real difficulties by which he will be frequently faced.”<sup>5</sup>

Our experience suggests that more important than precise training in technical subjects is the capacity for mastering, as occasion demands, enough of the technical detail to understand the problem at issue. It is well that technically trained men are not absolutely essential members for our commissions because the general lack of such training among appointees is striking indeed. With the exception of 2 or 3 commissioners, technical engineering training in any formal sense has been an entirely negligible factor in so far as the work of federal commissioners is concerned. George Otis Smith, once of the Power Commission, held a Ph.D. in science. Carroll Miller of the Interstate Commerce Commission and Marcel Garsaud of the Power Commission have been the only members of their respective boards ever to hold an engineering degree. Two members of the Radio Commission have been accredited engineers and another received his training at the Army Signal School. All these appointments are recent and the average length of service in each case has been less than two years. The last three lost office with the abolition of the Radio Commission

<sup>4</sup> “Socrates of the Railroads,” *Fortune*, February, 1932, p. 104.

<sup>5</sup> *Commercial and Financial Chronicle*, September 28, 1935, pp. 1978-9.

and none of the new Communications Commissioners has had engineering training.

Legal study, however, looms most important in the educational background. Only 37 actually received an LL.B. degree but 38 others either attended law school, read in a private law office, or undertook their own training for admission to the bar. Thus 75 of the 143 may be regarded as lawyers by training, although it does not follow from this that they pursued this profession, as we shall see in studying their subsequent occupations. In relatively few cases did these men have the advantage of studying at the best law schools in the country. They took their legal training where they could get it.

Basically viewed, however, this whole question of education as a preparation for the public service is open to debate. Too little is known about the possibilities and the limitations in this field. It is not the purpose of this study to pass judgment upon the educational equipment of the men who have served upon our regulatory commissions. The facts presented here show the varied origins of the men who have come to occupy these responsible positions. Their record is tangible evidence that high administrative positions are not closed to a man because of his limited educational opportunities. There is room for men with differing social antecedents and occupations. Education is only one of many factors that may have contributed to appointments.

In considering the educational equipment of our commissioners there is little point in drawing comparisons between this country and Great Britain. Our selective process for the public service is not determined in accordance with academic standards. Recruitment takes place at a different level. The crucial test comes not in comparing educational equipment but in comparing the efficiency of the selective machinery. In Great Britain the educational system is utilized as a refined selective process in recruiting men for the public service. English universities do not train men for government posts. They simply provide an opportunity for a group of individuals (fortunately placed economically) to acquire knowledge in various fields. The government's tests are devised to discover those students who are most competent in the acquisition and ordering of this knowledge. In other words the British have formalized, systematized and centralized their selective machinery of recruitment and harnessed the universities to the job. Annually through the mill of government examinations

passes a group of young men who are among the best of the nation's youth. Academic training helps in another way: it either sieves out or civilizes the uncouth. Several years in ancient institutions rich in tradition have a persuasive effect on social behavior. The prevailing forms of gentlemanly conduct are acquired by these youths so that their personal conduct as well as their mental processes will conform to the socially acceptable pattern. Thus they bring to the public service two immensely useful qualifications: they can "get on" with their fellows and they can "get up" at short notice an adequate command of the subjects that they must handle. The public service through this recruitment system secures each year many of the best products of the educational system. This educational aristocracy is drawn from the social aristocracy and the upper middle class. These strata are allied most closely with the university system. The contrast with the American method is marked indeed. Ours is the product of another system.<sup>6</sup> It sets no one line that all must follow if they would secure an important administrative post. It is identified with no party, section, class, or set of institutions. It fixes no educational hurdles of Greek or Latin or Philosophy to discourage the self-made man of ability whose early years were spent not in a struggle with syntax but with want.

Its weaknesses lie in the fact that it is haphazard. It gives the federal public service no way for early attracting the interest and loyalty of able young men and promising them a career of useful public service in return for devotion and competence. The most intelligent and energetic of the nation's youth accordingly look to business, the professions or elective office as a field of greater opportunity. The test of our system comes in the kind of men that it can recruit and hold. Hence there is little point for inquiring deeply into the educational equipment of our commissioners since the selective process operates in their lives at a stage far removed from the lecture room. They are appointed to public office for their traits of character, or their political influence, or their achievement in some line of work and not for their trained intelligence as demonstrated in academic attainment.<sup>7</sup>

<sup>6</sup> For an interesting contrast with systems abroad, see C. J. Friedrich, *Problems of the American Public Service*, McGraw-Hill, 1935, Chapter V. See also the comments of M. B. Lambie in *Training for the Public Service*, Public Administration Clearing House, 1935, pp. 4-5.

<sup>7</sup> See Appendices D, E and F for data on the clubs, religious affiliations and published works of the commissioners.

This review of the educational background of our commissioners presents a group of men the majority of whom have received some college education. A few were real scholars; many taught in universities. More of them have had some training in the law than in any other discipline. Their education has not been the best afforded by the nation's most outstanding universities, but it has to a remarkable degree been representative of the various educational facilities available. Most of them had to grasp the opportunities that were close at hand. They attended their local colleges. They went to more renowned institutions for graduate study. Some won scholarships and others read law privately in seeking admission to the bar. Viewed as a group, these commissioners found their academic work a prelude to the practice of law or the holding of public office.

#### OCCUPATIONAL EXPERIENCE

In studying the actual qualifications of those who have served on administrative commissions, the most important considerations relate to training and experience prior to appointment. The education, the social affiliations and the scholarly activities of these commissioners suggest something of their general cultural antecedents and preparation, but of much more significance is their occupational background.

Our data indicate the predominating professional and at times even professorial tone of this group.<sup>8</sup> The predominantly professional nature of the background and training of the Interstate Commerce Commissioners is very striking. Those who have taught outnumber those who have engaged in business by about two to one. E. E. Clark was the only labor union man to reach the commission. Prior to his appointment in 1906, he was Grand Senior Conductor and Grand Chief Conductor of the Order of Railway Conductors. Seven men were connected with the railroad service in some capacity before joining the I.C.C. All but 8 of the 43 had seen governmental service. Twenty-seven of the 43 I.C.C. commissioners were lawyers by training, 18 were active practitioners and 6 regarded the law as a secondary occupation. Nineteen were practicing law when appointed, but only two or three were in business.

Although the proportions vary somewhat, the occupational pattern suggested here by the Interstate Commerce Commissioners

<sup>8</sup> See Appendix G for charts showing employment at time of appointment and primary occupations.



does not differ greatly on the other commissions. "Attorney-at-law" is a phase that covers a multitude of activities that may have little to do with appearances in court or the preparation of legal briefs. A lawyer is often the legal representative of a business interest. He may be retained as a negotiator and general advisor on activities that may have only a remote connection with statutes or court decisions. Lacking the accolade of membership at the bar is a great handicap to a man who is otherwise quite competent to fill this rôle. He fits into no category that can be easily recognized. Lawyers, therefore, may represent a great variety of economic interests and may be spokesmen for different classes. To say that a man is a lawyer gives little insight into his real affiliations. Is he an able lawyer or a poor lawyer? Liberal or conservative? No general answers to these questions can be offered here. But a more fundamental question may be raised.

Is our present legal training of much real use to an administrative official? Commissioner White offers this direct answer: "Our legal education has not given emphasis to the proper preparation of lawyers for the public service; indeed there is a strong sentiment among some law faculties that no special preparation is needed or useful. This view cannot be accepted in the light of modern conditions."<sup>9</sup>

An acquaintance with the precedents and procedures of the common law has very little indeed to offer officials, for example, on the Tariff Commission or the Federal Reserve Board. In considering the appointee with a legal training the jurist must be distinguished from the narrow practitioner. Knowledge of public law and administrative law is not often gained by the average law student. "Little or no attention is paid to statutes, or to administrative orders and the techniques, reports, and decisions of other judicial and semi-judicial bodies in government besides the courts are seldom studied," one authority has written.<sup>10</sup>

The predominance of lawyers among our commissioners accordingly cannot be altogether justified in terms of the pertinence of legal training for administrative work. For many of our commissioners the possession of a law degree undoubtedly reflects valuable training. For others their inadequate legal education contributes little or nothing to their qualifications as commissioners.

<sup>9</sup> L. D. White, *Government Career Service*, p. 47.

<sup>10</sup> Oliver P. Field quoted in L. D. White, *ibid.*, p. 46.

In the backgrounds of our commissioners as reviewed thus far we see little evidence of training or experience that directly prepares our administrative officials for their duties. Nor do we have a system of recruitment capable of attracting youths who would like to attain to positions of responsibility in the government.

The characteristic of our system is this: that our public servants are lawyers or business men or professors. They are not administrators primarily. They have given their loyalties elsewhere before they enter the government.

This has one effect that cannot be lightly dismissed. A bureaucratic class interest is not likely to be constructed upon such a changing basis nor among men of such differing loyalties. But the unfortunate result is a lack of men who take a professional interest in administrative work. Much could be done to develop this kind of public servant before we need to consider means of curbing his power. It is in this connection that the proposal of Commissioner L. D. White of the U. S. Civil Service Commission is so significant. His plan of creating certain administrative career lines in the federal service would make it possible for the federal government to recruit a limited number of able young college graduates and offer to the best of these the chance to advance to positions of responsibility and prestige. This research on our federal commissioners bears out the validity of such a plan.<sup>11</sup>

The flaw in our system does not lie in the fact that we fail to get some good men. The qualifications of many of our federal commissioners are exceedingly high and compare favorably with administrators in any country. Nor do we lack a selective system of a roughly discriminating sort. In fact, commissioners seldom win a Presidential appointment before they have demonstrated their competence in several ways. There is perhaps less of "chance" in our system. Appointees are mature men. They have records that bespeak their capacity and their views. But we get these able men at a time when their theories are developed and their loyalties established. It is often difficult to bring them into the government service and harder still to keep them at their posts. Often they come with no intention of staying for more than a very brief span. They want the experience, or the prestige, or they are willing to make a temporary sacrifice in order to render

<sup>11</sup> L. D. White, *ibid.*, *passim*.

a public service. They are justified in their attitude. Their reasons are sound. They owe the government no special debt that they should repay with service. Their accomplishments have been in private walks of life. Here they find rich rewards and congenial work. Service on a federal commission is no more than an interruption in their normal careers. It is often a strange interlude, and one they are anxious to conclude.

We would not want to lose the services of such men of affairs. They bring vigor and a fresh viewpoint into the government service. Our need is to join with them a more stable element. We need men equally able and aggressive who are thoroughly steeped in the work of a department or commission: men whose loyalty to the governmental service is built up through years of association and accomplishment; men who have found satisfaction in the recognition and the promotion that has come to them for work well done; men who are able to work on terms of easy and true equality with leaders in business and the professions. Men of such calibre and of such loyalties cannot be picked up late in life and placed in responsible administrative positions. They must be developed within the government itself.

A prominent British administrative official upon a recent visit to the United States made this wise comment:

Perhaps one of the essential ingredients most lacking in comprehensive American thought is appreciation of what a skilled administration means in the task of government. One cannot safely legislate beyond capacity of experienced administration to execute for it is not enough to pass acts perfect in drafting and principle and applied at the appropriate time; there must be enough skilled administrators drawn from various types of public service, paid or unpaid, to carry them through. There is little sense of the truth that administration is both a tradition and a technique.<sup>12</sup>

<sup>12</sup> Sir Joshua Stamp, *New York Times*, Sunday, July 14, 1935.

## CHAPTER V

### EXPERIENCE IN GOVERNMENTAL SERVICE

DROMIO: *If I last in this service, you must case me in leather.*

COMEDY OF ERRORS

In the occupational background of our federal commissioners what elements are there suggesting that administration can become a recognized tradition and technique rather than an incidental activity in the busy life of a lawyer, professor or business man? A partial answer to this question may be found in an examination of the extent to which appointees have served the government before undertaking commission service. The most common occupational activity found among the 143 cases studied was public service in one form or another. Upon this bare fact alone it appears that these men have to an unusual degree some sense of social responsibility or public spirit. It can hardly be put down to chance that among the positions filled by these men before their commissionships 103 federal positions can be listed and 108 posts under the state governments. The possible significance of this work for their later commission service can only be discovered by a more detailed analysis. To be sure the mere holding of public office did not introduce all these men to the techniques or the traditions of administration. Nevertheless, it is certainly possible that in the minor public offices held by these commissioners early in their careers experience may have been gained that was valuable out of all proportion to the importance of the office itself. What kinds of public positions have these men filled?

Experience in municipal government is uncommon in the records of our commissioners. Five held the office of mayor in five small towns. A few others found service on a school committee, the board of directors of a public library, or a city council. One commissioner was once a city treasurer, another, a city tax inquisitor and another, a municipal comptroller. Not more than 30 of the 143 commissioners ever had any official connection with municipal government. Ten of these later served on the I.C.C. To what extent has state service been a training ground for federal officials?

## PRIOR PUBLIC SERVICE IN STATE GOVERNMENTS

An examination of the record for those who have served our state governments provides some indication of the calibre of the men later taken into the federal service.<sup>1</sup> Three former governors have served on our commissions. Although no generalizations can be built upon three cases, it is obvious that gubernatorial experience may be useful to any federal administrator. Men who possessed such experience along with intelligence and strength of character would be excellent commissioners. They are not frequently found.

In the miscellany of state jobs held by other federal commissioners earlier in their careers, it is impossible to discover any considerations directly bearing upon their later administrative work although here again valuable personal experience may have been gained. We find them acting in many capacities: as clerk of the state court, on the state board of education, as a supreme court reporter, as a legislative journal clerk, as a state tax or library commissioner. Thirteen of the commissioners acted as state or county judges earlier in their careers. This experience was the outstanding qualification for several commissioners.

The states provide one training ground from which some notable administrators have come. The lines of connection between state and federal regulatory agencies are strongest where railway regulation is concerned. Here is a public utility that has long been watched by the state governments, and one that has offered an opportunity for training federal commissioners through valuable prior experience on state railroad commissions. As the public service commissions in the states develop and expand their authority or importance, there will become available a larger number of state commissioners competent to deal with matters relating to communications, water power, securities and the regulation of business practices. The Interstate Commerce Commission has benefited by the experience many of its members secured in the states, but it is very doubtful whether the other commissions could have drawn upon a comparable group of state officials trained to handle the problems with which these bodies were confronted. The I.C.C. to this extent has been favored by circumstance.

<sup>1</sup> See Appendix H for prior public service in state governments.

The prior administrative experience of Commissioner Eastman can be held up as about as valuable a training as a man can get. After graduating from Amherst, Eastman served as secretary of the Public Franchise League of Boston and was then appointed to the Public Service Commission of Massachusetts. He did notable work in connection with the organization of the Boston Elevated Railway. After four years of state commission service he came to the I.C.C. in 1919. Speaking of the other members, a recent article states:

It turns out, therefore, that like Mr. Eastman, most of the present commissioners have long careers of public service behind them. Balthasar Henry Meyer, appointed by Taft in 1911, oldest in point of time served, was formerly a professor of political economy at the University of Wisconsin, and was a member of the Wisconsin Railroad Commission. Clyde B. Aitchison, Oregon lawyer appointed by Wilson in 1917, was a member of the Oregon Railroad Commission. Ernest I. Lewis, formerly a special writer for newspapers and magazines, was trained on the Indiana Public Service Commission. Patrick J. Farrell was formerly chief counsel for the I.C.C. Charles Delahunt Mahaffie, one of Clarence Darrow's former assistants (in the case of the *Los Angeles Times* vs. *McNamara*), served eight years in the I.C.C. Bureau of Finance before Hoover appointed him a Commissioner in 1930. William E. Lee was formerly chief justice of the Supreme Court of Idaho, and Hugh M. Tate was a judge in Tennessee. Thus the only two commissioners who cannot be designated as former public service men are Ezra Brainerd, Jr., . . . who is known as a 'business mind' having been vice president and general counsel of the First National Bank of Muskogee, Oklahoma; and Frank McManamy, former locomotive engineer on the Pere Marquette, who is said to know every foot of track in the country, and who can be described as a railroad man. Even he was trained in the I.C.C. Bureau of Safety for several years.<sup>2</sup>

This picture of the I.C.C. is given here because it sums up the best that has been attained thus far under our system. This is not to say that these men are the best that have served or the outstanding commissioners in all the federal service. Standards for making such a judgment are lacking. The combination of experience and of occupations represented on this board, however, shows the sources that are most fruitful in providing our commissioners today. Unless external conditions alter mightily and our statutes are changed we must look to the colleges and the bar rather than to the business world for commissioners. Now and again an able business man can be persuaded to serve, though seldom for long.

<sup>2</sup> "Socrates among the Railroads," *Fortune*, February 1932, p. 73.

Infrequently a competent man from the ranks of organized labor is appointed. Most promising, however, from the viewpoint of what is practically possible and what is administratively sound is the line that has been established between service on state regulatory commissions and the federal service. Besides the I.C.C. commissioners listed above, the following have served on state regulatory bodies: G. W. Anderson on the Massachusetts Public Service Commission, W. M. Daniels on the Board of Public Utility Commissioners of New Jersey, W. L. Bragg on the Alabama Railroad Commission, W. M. W. Splawn on the Texas Railroad Commission, J. W. McDill on the Iowa Railroad Commission, and C. G. McChord on the Kentucky Railroad Commission, being its chairman for 10 years. What is true for the Interstate Commerce Commission may in the course of time apply to other agencies as well. At present the rest of our federal commissions cannot be compared with the I.C.C. even when every allowance is made for their fewer numbers and their shorter span of existence. It is encouraging to note, however, that two of President F. D. Roosevelt's appointees have a background of commission service in the states comparable to the records of the Interstate Commerce Commissioners. They are G. C. Mathews of the Securities and Exchange Commission (earlier of the FTC) and P. A. Walker of the Federal Communications Commission. Mathews began as a rate investigator on the Wisconsin Railroad Commission and acted for four years as statistician-in-charge of the public utility rate and accounting work. His career is described in the *Magazine of Wall Street* as follows:

He is for the Government, which for most of the years since he has been out of Wisconsin University has meant the LaFollette-controlled government of Wisconsin, and that has meant consistent trimming of the railroads and utilities—with no implication that the trimming was not in order. From 1912 to 1933 he was putting in about all his time for the State Railroad Commission and the blue sky law, doing a little special accounting and professional dissertation on the side. He left his Wisconsin job in 1933 to help the receivers of the Insull Middle West Utilities Co. to find out where the octopus was envired in the financial stratosphere, having the title of vice-president in charge of rates. In 1933 there was a vacancy in the Federal Trade Commission and Mr. Mathews being nominally labeled as Republican met Mr. Roosevelt's problem of appointing the right kind of a Republican to a commission which was rather roughly told to do his will or get out.<sup>3</sup>

<sup>3</sup> *Magazine of Wall Street*, July 21, 1934, p. 331.

The career of P. A. Walker is an interesting parallel. Commissioner Walker has been in public service for most of his life. "Before I attended law school," he states, "I was principal of the high school in my home town, in Shawnee, Oklahoma. Very soon after I was graduated from the law school of the University of Oklahoma I was elected by the corporation commission as its attorney. I remained in that position from 1915 to 1919, when I went with the supreme court in the capacity of referee or master in chancery. . . . Then when the Transportation Act of 1920 was passed I was elected to the commission and represented it before the Interstate Commerce Commission as special counsel."<sup>4</sup> For more than 15 years Walker was connected with the State Corporation Commission of Oklahoma. As Special Counsel, he conducted litigation before the Corporation Commission and also before the I.C.C. and the federal courts. He was concerned with securing a reorganization of the rates on grain, cotton, live-stock, petroleum and in other cases where rate reductions for the Southwest were sought. As chairman of the Corporation Commission of Oklahoma, he carried on investigations of the rates of various public utilities, such as electric light and power, telephones, etc.

These cases show that an avenue has opened from state to federal regulatory commissions for quite a few men. The future significance of these instances may be very great indeed. If real achievement on state commissions brings promotion to their federal prototypes the whole character of our regulatory machinery will be strengthened. Most of the state commissions have long been handicapped and discouraged. The practice of federal appointments as rewards to the able would "tone up" the personnel greatly. The federal authorities have recruited some of their best men from this source. There could be no more appropriate training ground for a commissioner, unless it be on the federal boards themselves.<sup>5</sup>

<sup>4</sup>Hearings, Confirmation of Members of Federal Communications Commission, Interstate Commerce Committee, U. S. Senate, Seventy-fourth Congress, First Session, 1935, p. 87.

<sup>5</sup>See W. E. Mosher and F. G. Crawford, *Public Utility Regulation*, Harper and Brothers, 1933. Chapter V deals with the personnel of state commissions and should be read in connection with this study of the federal commissioners. With regard to the qualifications for a commissioner the authors state: (pp. 57-58) "The office calls for a combination of legal, engineering, accounting and administrative training, together with personality and sound character, a combination that results from natural endowment and professional training and one that can be developed only



## PRIOR SERVICE IN FEDERAL ADMINISTRATIVE POSTS

In the federal service our commissioners have been recruited chiefly from three sources; namely, from the ranks of those performing legislative, legalistic or technical functions.<sup>6</sup>

Those who have acted as legal advisors in the federal administration constitute the largest single category under the "prior public service" classification. Twenty-five of the commissioners have at some stage in their career been employed as legal counsels to the federal government.

A clear case where experience in the Department of Justice very definitely qualified a man for his subsequent duties on a commission is that of Abram F. Myers. He served first as a Special Assistant to the Attorney General; he had charge of proceedings under the Sherman Law in a number of important cases, such as the International Harvester Company, the Reading Company, and Lehigh Valley Railroad Company; he became Senior Attorney of the Anti-Trust Division and went directly from this work in the Department of Justice to the Federal Trade Commission.

The proportion of those serving on the Federal Communications Commission and the Securities and Exchange Commission who have had some legal experience in federal administrative agencies is noteworthy. Of the 7 original members of the FCC, 4 had such experience. Various cases suggest how direct may be the prior experience and how valuable the training that can thus be acquired in the administrative service. These appointments of officials with legal training and experience in their special fields are too few to establish a definite tendency, but they do suggest possibilities for the future.

Administrative experience either as an expert, or as a director of some service in the federal government, is a significant part of the background of our commissioners in about 18 cases. So miscellaneous have been the activities of these men that it is

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by years of experience in utility regulation itself. If the office of commissioner were once recognized as a high calling and a real profession, as it indisputably should be, 'political availability,' residential restrictions, and state citizenship would be consigned to the limbo of forgotten things, and appointing authorities would cast about for qualified commissioners, just as they have done in a few progressive states in filling such other professional administrative positions as those in education, charities, correction and public health."

<sup>6</sup> See Appendix I for prior public service in federal government.

difficult to fix the limits of the classification. For many, a direct correlation can be found between prior administrative activities and their subsequent work as commissioners. For example, G. O. Smith was director of the Geological Survey before his appointment to the Federal Power Commission; J. E. Davies was Commissioner of Corporations prior to becoming a member of the Federal Trade Commission; C. S. Hamlin was an assistant secretary of the Treasury and later a member of the Federal Reserve Board. It can be clearly read from the record that most of these men in this category followed the same line of work from the lower to higher ranks in the administration.

The record of those who have served shows that the holding of public office has been a very common experience. Moreover, an advance from one administrative position to another is to be found in many cases and a clear line has likewise opened between the federal and state service. Experience in elective office, on the other hand, is of less significance than an administrative background for commission membership. This statement can be substantiated by examining the records of former members of Congress who have been appointed to the regulatory boards.

#### PRIOR EXPERIENCE IN ELECTIVE OFFICE

Of the 143 commissioners, 16 had previously served as members of the House of Representatives and 3 as members of the Senate. J. W. McDill, J. F. Nugent and F. M. Cockrell served in the upper chamber. McDill, a Republican, had been out of the Senate for nearly 10 years when placed upon the I.C.C. by President Harrison in 1892. Nugent, a Democrat, served in the Senate by virtue of an appointment from the Governor of Idaho to an unexpired vacancy. He resigned from this temporary seat to accept from President Wilson a full term of 7 years on the Federal Trade Commission. At 71, Francis M. Cockrell was placed upon the I.C.C. by President Theodore Roosevelt when his career of 30 years in the U. S. Senate was brought to an end. His defeat was due to a prolonged factional fight in the Missouri legislature which kept that body deadlocked for three months. The President declared that although the State of Missouri had repudiated a faithful public servant the federal government was not going to lose his services. Cockrell was an important figure in his day and he was brought forward as a possible Democratic presidential

nominee by Champ Clark and William Jennings Bryan in 1904. He served for over five years on the commission and died at the age of 81. He served his country well but membership on the I.C.C. was a reward for his past record rather than an opportunity for further service. W. R. Morrison, a Democrat, after 14 years in Congress was defeated in his attempt to enter the Senate. The following year he was appointed a member of the Interstate Commerce Commission by President Cleveland and served for 10 years. Congressman D. J. Lewis, a Democrat, failing election to the Senate in 1916 was appointed a member of the Tariff Commission by President Wilson in 1917.

From this evidence it does not appear that membership on our commissions holds any great attraction to those who have the prospect of a career in the U. S. Senate. Adequate evidence is lacking to prove this one way or the other. We have no way of knowing how many Senators have been offered and have refused the opportunity to serve on federal commissions. It seems highly probable that the prestige of Senatorial office outweighs a Commissioner-ship.

When we examine the 16 Congressmen who became commissioners some interesting facts appear. Much criticism has been leveled at those lame ducks who limp about looking for comfortable federal positions when their political careers grow to a close. As already noted, several Senators became commissioners under such circumstances. But there is another side to the story. Legislative experience may mean qualifications of the most direct value. For example, John J. Esch was in Congress for over two decades and during this time busied himself upon the Committee on Interstate Commerce; this work stood him in good stead later upon the I.C.C. Judson C. Clements during his 8 years in Congress was primarily interested in transportation problems and aided in formulating the original I.C.C. statute in 1887.<sup>7</sup>

<sup>7</sup> Edmund Platt in the House of Representatives from 1913 to 1920 served on the Committee on Banking and Currency and was chairman during his last year. He resigned from Congress in order to join the Federal Reserve Board. Lincoln Dixon was a member of the House for 14 years from the 59th through the 65th Congresses and for 8 years served on the Ways and Means Committee. He was recognized as one of the best-informed men in Congress on tariff matters. Nearly eight years after leaving Congress he was appointed as one of the Democratic members of the Tariff Commission by President Coolidge and re-appointed by President Hoover.

While a close correlation can sometimes be found between the experience acquired in Congress and the competence needed on administrative bodies, it does not follow that appointments are made in order to utilize such qualifications. Practically every appointment of an ex-Congressman is made for political considerations. It cannot be positively proved that this is the reason any more than motivation can ever be directly examined. But in the absence of other definite qualifications indicating special competence, we are thrown back upon the political activities of certain men as the most convincing explanation for their selection. We reach the general conclusion that while in a number of important instances legislative experience has meant valuable training for those becoming commissioners, in most cases the work done in Congress was not directly pertinent to the subsequent administrative responsibilities of the appointees.<sup>8</sup>

A careful review of these congressional appointees does not disclose many instances where their legislative background has brought experience pertinent to the commissions. The congressional committee experience of these men has made a substantial contribution to their administrative task in not more than four

<sup>8</sup> E. L. Davis appointed to the Federal Trade Commission by President Roosevelt in 1933 had been chiefly concerned with merchant marine, radio and fisheries problems while in Congress. W. A. Ayres, another Democratic Roosevelt appointee on this commission, had been most conspicuously identified with the Appropriations Committee in the House of Representatives. W. E. Humphrey's committee assignments had little apparent connection with his duties as a Trade Commissioner. He served on Merchant Marine and Fisheries (1907-1912), Expenditures in Department of Agriculture (1906-1907), and Rivers and Harbors (1910-1917). Mr. Herbert J. Drane, at the age of 70, was appointed by President F. D. Roosevelt to a four year term on the Federal Power Commission. For forty-three years he had been engaged in growing citrus fruits and in managing a real estate and insurance business at a small town in Florida. For the 16 years prior to his appointment to the commission he was in Congress and served as a member of the House Committee on Naval Affairs. Three of the six ex-Congressmen to serve on the Tariff Commission have come from the House of Representatives within very recent years. Frank Clark spent 20 years in Congress and 29 months on the commission. He had been a member of the following committees: Claims, Expenditures in the Post Office Department, Insular Affairs, Patents, Public Buildings and Grounds, Library, War Claims, Women's Suffrage, Alcoholic Liquor Traffic. J. W. Collier came to the commission after many years in Congress only to serve for six months. His committee assignments included: Industrial Arts and Expositions (1909-1913), Mileage (1909-1911), Merchant Marine and Fisheries (1911-1913). C. R. Crisp was the third Congressman and both he and Collier had a long experience on the Committee on Ways and Means. This service may be taken as a pertinent qualification for service on the Tariff Commission. But Crisp's tenure was just half that of Collier: he resigned after 3 months.

or five out of 19 cases. On the other hand, members of the House of Representatives have shown a great willingness to serve on these administrative commissions. Crisp resigned from Congress before the expiration of his term in order to join a commission and Ayres, although renominated for election to the 74th Congress, withdrew from the running in order to become a commissioner.

The legislators who have the most to contribute from their congressional experience have come to the administrative service too late. To acquire knowledge for administrative problems by a life-time of legislative work is to use a very indirect approach and Congress is not the best training ground for commissioners. This relationship has another aspect. Our commissions have at times been treated like retiring grounds for legislators. This viewpoint is inadvertently but none the less clearly indicated in the resolutions adopted by the U. S. Tariff Commission at the time of J. W. Collier's death. The resolutions refer to the commissioner's distinguished service in Congress lasting nearly a quarter of a century and his advancement that terminated in his chairmanship of the Ways and Means Committee in the 72nd Congress. They state:

He gave so generously of his time and physical strength to his very heavy official duties during this period of world-wide depression that he suffered impairment of health from which he never recovered. *As a fitting climax to his public career and in special recognition of his long and faithful service upon the Ways and Means Committee*, President Roosevelt appointed him . . . to be a member of the United States Tariff Commission, for the term ending June 16, 1937.

His death deprives the Commission of a man trained in the theory and the administration of law, profoundly experienced in legislation, and personally familiar with the practical and political phases of tariff making.<sup>9</sup>

Here in brief is the logical conclusion of a reliance upon legislative service as a qualification for appointment to a commission. There is always the danger that this element of reward for faithful service may enter into such appointments. Thus the administrative service is not regarded as a position for the young and active public servant, but rather a place for the man who has spent his best years in the representative assembly. Moreover, the number of instances where men thwarted in their aspirations for elective office have turned to appointive positions cannot be put down

<sup>9</sup> News Release, October 4, 1933 (*italics mine*).

to mere coincidence. The men who have come from Congress to the commissions have not as a general rule brought to their new work a background definitely germane to their administrative duties. When they have been well qualified because of their activities in Congress, they have usually been too old to give the commission the benefit of their counsel for anything but the briefest of tenures. Prior public service in the halls of Congress has not been a significant qualification for work on these administrative boards.

### AGE

The record of the veteran legislators who have come to the commissions after years in Congress suggests the importance of considering age with reference to our discussion of proper qualifications. The actual record of all those appointed to serve on our commissions when past the age of three score supports the pertinence of such an inquiry. Twenty-one of our commissioners undertook their new duties when they were over 60 and of these one was 70 and another 71. We wish to avoid reading more significance into this matter of age than the facts warrant. Mental and physical vigor varies so greatly with individuals that it is very dangerous to generalize. The intention is not in any way to cast reflections upon the accomplishments and personal competence of the officials falling within this age group but simply to note the striking common elements that appear when these men are considered together. Our purpose is to do no more than draw the inferences that seem inescapable.

Nine of the 21 persons over 60 came to their administrative work after a long period of service in Congress. The important point to note here is that of these old men, the largest single group were politicians. They had spent a life-time acting and thinking as politicians and now late in life they were expected to adjust themselves to a position calling for different talents. Judging by past experience, we reach the conclusion that if a man over sixty wishes to spend his declining years as the member of one of our federal commissions, an active political past gives him the best chance for appointment. There can be no question but that political influence is of foremost importance in the selection of those in this age group. Sherman Lowell joined the Tariff Commission at 68. His life-time of fruit-growing and his position as Master of the National Grange could scarcely have prepared him for his new duties,

but he had the support of Senator Wadsworth of New York. R. V. Taylor had served as Federal Manager of a small group of southern railroads during the war but he had also been active in Alabama politics and gone as a delegate to many national conventions. The "need" for Southern representation on the commission was cited as an excuse for his selection.<sup>10</sup> He joined the commission at 67 to fill an unexpired vacancy. He served for four years but was denied a reappointment by President Hoover on account of his age. Although he refused to consider this the real reason for his rejection, it is clear from other evidence that his eyesight was failing and his period of usefulness on the commission had reached an end. The normal expectancy of life after sixty does not justify such selections. Even if an old man is able to serve for several years and learn his job thoroughly, he cannot look forward to many years for applying this expertness.

The only circumstances that warrant the appointment of an old man are those where his exceptional training and talents have prepared him directly for the work he is to do. This was the case, for example, with President Cleveland's appointment of T. M. Cooley in 1887. This great American jurist and profound student was of tremendous value in launching the Interstate Commerce Commission. He undertook this task when 63 and he gave the country the benefit of his great abilities until a complete physical collapse after 58 months of service forced his retirement.

Our experience with appointees over sixty who brought to their work definite technical training has been limited and on the whole unfortunate.<sup>11</sup> The appointment of men past three score is not conducive to building up administrative tribunals. Such boards, if they are to function most effectively, cannot be made a haven for defunct politicians or a home for retired statesmen.

There is one other consideration that is germane to this discus-

<sup>10</sup> See Mansfield, *The Lake Cargo Coal Controversy*, pp. 142-3, 149.

<sup>11</sup> Colonel J. H. Dillon at 62 and Rear-Admiral W. H. G. Bullard at 61 came to the Radio Commission with years of radio and engineering work behind them. Both died in office, the former after 7 months, the latter in 8 months. Professor Henry J. Ford spent many years in the study of government. At 69, his friend President Wilson appointed him to the I.C.C., but the Senate refused to confirm the appointment. He served for only 7 months. Edgar A. McCulloch was a justice on the Supreme Court of Arkansas from 1904 until his appointment to the Federal Trade Commission in 1927. He was a man of great integrity and judicial temperament although he had much to learn about his new duties. He died after 71 months of service but before his first term had expired.

sion of the age qualification. It applies to those who have long served in Congress as well as to those who have won a place in business or the profession. In the course of a long life of struggle and achievement, an individual inevitably becomes identified with certain interests and attitudes. His views become crystallized and his sympathies fixed. A person of any strength of character must needs make up his mind and stand by his convictions. A man active in public affairs can hardly go through sixty years of life and remain in a state of entire neutrality toward important national policies. Accordingly, when he is appointed to serve on a body whose quasi-judicial responsibilities call for objectivity and judicial poise, the adjustment is not easy. Of course, it can be made. Those appointed to the bench are faced with the same problem. But our administrative commissions are not courts and our commissioners are not treated as judges. They are often dealing with matters of policy and they cannot cut themselves off from their past. This difficulty has been demonstrated in the Tariff Commission. William Burgess before he joined this body at 64 had spent a lifetime in the pottery business as importer, director of the International Pottery Company and president of the U. S. Potters' Association. He spent years agitating for tariffs favorable to his business and his enemies stigmatized him as a "lobbyist." This criticism led to his resignation when his term was half completed. When the name of R. L. O'Brien was sent to the Senate his opponents took the ground that he was too strong a protectionist. He was editor of the conservative Boston *Herald* for 18 years. He was a forceful man and at 66 he had very strong views on tariff policy.

When men of years with reputations and positions established in certain walks of life are selected for service, the views they hold on public problems constitute an important aspect of their qualifications. Their abilities are not easily disentangled from their theories. It is, moreover, essential to know something of the social and economic philosophies of appointees; their official actions will in large measure be determined by the mental spectacles they bring to their work. But should our commissioners develop their views in direct contact with their administrative experience over a long period or should they bring them ready made to their administrative task?

If the age at time of appointment is any indication, the great



majority of our commissioners have had a long preliminary period for developing their judgments and theories in an environment quite different from that surrounding them later in their administrative work.

Only 21 men under the age of 45 have been appointed, while those ranging from 45 to 54 years of age reach a total of 68. Thus about half of our commissioners have been drawn from the span of years that is often described as the "prime of life." Thirty-two commissioners at the time of their appointment fell within the interval of 55 to 60. It is interesting to note that the only young men to win commissionerships were engaged under the government in work closely related to the administrative responsibilities to which they were called. Thus recognition has come early to those in the federal service who have possessed definite qualifications. This is not to say that merit has been the only consideration in these cases. "Political pull" or knowing the "right people" was a contributing factor in several instances. Nevertheless, the group of youngest men to be appointed to our administrative commissions was recruited from those who had acquired some experience in closely related work within the federal administrative service itself.

Four men under thirty-five years of age have been appointed to serve on the commissions studied. Sam Pickard, when only 32 years of age, became a Federal Radio Commissioner. W. S. Culbertson was appointed to the Tariff Commission when 33, J. M. Landis, to the Federal Trade Commission and Irwin Stewart, to the Communications Commission at the ages of 34.<sup>12</sup>

All of these men had identified themselves either through their activities, their studies, or their writings with the problems they were called upon to consider as commissioners.

<sup>12</sup> Mr. Stewart was in charge of the Division of Radio in the State Department; Mr. Culbertson served as an examiner on the U. S. Tariff Board (1910-1912) and later acted as a special counsel to the Federal Trade Commission. Mr. Pickard served his apprenticeship as Radio Commissioner for the first year prior to his appointment. Before becoming a commissioner, Landis, as one of the Roosevelt brain trust, aided the Committee on Interstate and Foreign Commerce in framing the 1933 Securities Act and later acted as a special advisor to the Federal Trade Commission in arranging the administration of the securities legislation. His eight months of service on this body was a prelude to his present position on the Securities and Exchange Commission. Of course, his qualifications are based on his Harvard Law School career, but in all these cases it was to the advantage of the young man to "be on the spot." Other factors must also be weighed.

Mr. E. B. Brossard, appointed to the U. S. Tariff Commission at 36, is the youngest of the seven men under 40 and over 35 to have been appointed to commissionerships. He had served as an agricultural economist on the staff for several years before stepping upward. Mr. Abram F. Myers acted as an attorney and special assistant in the Attorney-General's office for about seven years before becoming a Federal Trade Commissioner at 37. This preliminary experience was directly useful on the commission. Mr. J. E. Davies was 37 when he ceased to be U. S. Commissioner of Corporations and took up his duties on the then newly created Trade Commission.

The correlation is somewhat less direct when we consider the two 37 year old appointees to the Interstate Commerce Commission—J. B. Eastman and C. B. Aitchison. These men were not in the employ of the federal government, but they were both engaged in the regulation of utilities. Mr. Eastman for four years prior to his federal appointment had been a member of the Massachusetts Public Service Commission and Mr. Aitchison had had nine years of similar experience in Oregon. During the year prior to his appointment Mr. Aitchison was in Washington as legal counsel to the National Association of Railway Commissioners. His close association with railway regulation was, therefore, continuous. Mr. O. H. Caldwell, appointed to the Federal Radio Commission at 39, had been for years actively concerned with the radio industry as an engineer and an editor of radio journals.

M. S. Szymczak joined the Federal Reserve Board at 39 years of age. His previous experience was in banking and finance. He had served as Comptroller of the Currency in Chicago.

Examination of those in the early age brackets discloses a striking correlation between service in the federal administration, expert training, and the age of the appointee. A young man must have very pertinent qualifications to win an appointment.

The vast importance of considering age along with education and experience is obvious if we are to encourage men to seek a real career on our administrative commissions. This review of the actual qualifications of those who have served demonstrates that in not a few instances certain administrators possess all the attributes that point logically toward a long career of usefulness to the government and of satisfaction to themselves. There have been many competent men in the past and many able men are now

serving. Interspersed among the highly qualified appointees are some whose weaknesses are only too evident.

Our survey of the actual qualifications of these federal commissioners points to the pertinence of considering whether or not a life career in the public service is possible. Certainly it is essential to find men who by experience and training are capable of carrying out the mandates of Congress for industrial regulation. Judging from past experience it seems highly unlikely that these men can be recruited from business. Even if this were possible, our regulatory commissions obviously should not be dominated by the industrialist. As it happens these boards are composed largely of professional men most of whom have taken some part in public affairs. There are a few journalists and farmers; trade unionists and engineers are the rare exception. Some observers might find much to criticize in this general picture. There are flaws certainly. Weak appointees have been named but few indeed are the commissioners entirely bereft of qualifications on some defensible points. For practical purposes improvement must be sought by stressing those factors in the present set-up which will bring in the most competent men from the sources available.

Thus the record to date suggests that we are more likely to get from college faculties than from great corporations competent men who are willing to serve for a long period. Men well trained and able to devote their best years to administrative work are to be found in the federal departments or on state commissions rather than in Congress. The aged politician usually has little to offer and only a brief time to serve.

The hope for the future lies in what the past has proved possible. Despite numerous obstacles, a limited group of able men have carved out a career for themselves on our federal regulatory commissions. The record shows that it can be done.

## CHAPTER VI

### THE PROBLEM OF TENURE\*

POLIXENES: *Thou, having made me businesses which none without thee can sufficiently manage, must either stay to execute them thyself or take away with thee the very services thou hast done.*

WINTERS TALE

What men have served for 15 years or over? There have been eight such men in the history of the I.C.C.: J. C. Clements, B. H. Meyer, M. A. Knapp, C. B. Aitchison, C. A. Prouty, J. B. Eastman, E. E. Clark and C. C. McChord. The F.R.B. is the only other agency where men with this length of service can be found. A. C. Miller and C. S. Hamlin each served for 20 years and 5 months. A span of this duration may be regarded as one criterion in considering the broader question as to what men have found a "career" upon our administrative commissions. C. S. Hamlin and C. C. McChord were the only two in this group to take office when over 50 years of age, but in the case of the latter his appointment to the I.C.C. was but another step forward along the road he had been following as a member of the Kentucky Railroad Commission. Hamlin's prior career had been more varied, but he had done important public service in various connections. The 8 commissioners who undertook their duties when under the mid-century mark and remained at their post for the next 15 years may fairly be said to have made a "commission career." These 8 cases are all the better substantiated by the fact that appointment to the I.C.C. and the F.R.B. meant a further development of the individual's prior training and experience.

If we take as our criterion for determining a career a 10-year span of service plus direct previous training or experience in the field regulated, several more names can be included. Nine men have served for more than 10 years and less than 15; five others served almost a decade. Of these 14 men how many continued their primary interests when they accepted appointment to an administrative commission? If this question constitutes the stand-

\* Unless otherwise stated, all dates, ages and other figures are brought down to January 1, 1935.

ard for a career, what do we find? Which men shall we regard as having made a profession of commission service?

Frank McManamy of the I.C.C. is the clearest case. He has been a commissioner for about 12 years and before this served for years on the staff.

G. R. James, after a long business career interspersed with some war service, came to the Federal Reserve Board at 57. He has served since 1923 and is still on the Board. But his life work has really been given to business. He falls outside our category. So does Edmund Platt who served on the F.R.B. for a decade after his appointment at the age of 55.

E. P. Costigan graduated from Harvard and then practised law in Denver for 17 years before joining the Tariff Commission at the age of 43. He served from 1917 to 1928 when he resigned in disgust at the political interference which he felt rendered his position untenable. Here is perhaps the clearest case of an able man who would have been willing to give a life-time to commission work had the circumstances been tolerable. After leaving the Commission, Costigan became U. S. Senator for Colorado in 1931.

Another Tariff Commissioner with about 10 years of service to his credit is E. B. Brossard. His previous training prepared him for the position of Agricultural Economist on the Commission in 1923 and two years later he was given a commissionership. He is a career commissioner.

Another clear case on this board is that of T. W. Page who completed a decade of service in 1936. Commissioner Page was on the early U. S. Tariff Board in 1911 and he was appointed by President Wilson in 1918 to the Tariff Commission. He resigned in 1923, feeling apparently that the Commission was handicapped by the flexible tariff provisions. After the reorganization of the board in 1930, he was reappointed. Here is an able, well-trained and experienced man who has built up a career of public service on a commission despite great political obstacles. In a sense he has had to fight in order to serve the government.

T. O. Marvin served for 9 and one-half years on the Tariff Commission before the Tariff Act of 1930 terminated his career. He might possibly in time have cut out a career for himself in this work. From 1911 to 1921 Marvin was secretary of the Home Market Club of Boston, and since his retirement from the Commission, he has acted as a professional consultant on tariff prob-

lems. His career has been that of a tariff expert and not that of a federal administrator.

E. I. Lewis and J. S. Harlan after pertinent prior experience each served for more than 10 years and might have continued had not their reappointments met with a hostile reception in the Senate. When the last of the "lame-duck" Congresses refused to act upon Hoover's nominations, the name of Lewis was passed over. His experience was saved for the federal service when he was made director of the Bureau of Valuation of the I.C.C.

William R. Morrison was 63 years of age when appointed by President Cleveland to the I.C.C. Behind him lay a life-time spent in Illinois politics. He falls outside our category although he served for 129 months before retiring.

James D. Yeomans after legal and railroad experience came to the I.C.C. at 49 and served for the remainder of his active years. He can be classified as a career commissioner. This applies also to W. M. Daniels, an economist, who was 47 when appointed to the I.C.C. J. B. Campbell also gave nearly 10 years to the I.C.C. Railroad problems have been his life interest. H. C. Hall was not identified with transportation questions before coming to the I.C.C. at 54.

Of these 14 men with a tenure of nearly a decade or more, 8 can be classified as career commissioners. The main interests of their working life centered about some federal commission.<sup>1</sup> These 8 commissioners plus the 8 with 15 years or more of service gives a total of 16 "professional" commissioners out of the 143 cases examined.<sup>2</sup>

Many of those now serving may possibly achieve a life career in their present work—time alone can tell. The striking fact remains that out of the many competent men associated with our

<sup>1</sup>No member of the Federal Trade Commission has ever served for a decade although W. E. Humphrey was in office for 103 months before his removal by President F. D. Roosevelt. The life of the Radio Commission was too brief and uncertain to make it significant except as an example of conditions which make prolonged tenure well-nigh impossible. See the writer's article on "Politics and Radio Regulation" in the *Harvard Business Review*, January, 1935. The Federal Power, Securities and Exchange, and the Federal Communications Commissions are all too recent to be discussed in connection with the actual tenure of their members.

<sup>2</sup>W. E. Mosher and F. G. Crawford, *Public Utility Regulation*, Harpers, 1933, p. 63. Taking as their standard eleven years of continuous service, the authors find that of one hundred sixty-five state public utility commissioners in office in 1929, twenty-eight might be classified as "career men."

numerous commissions only a very small group have made this work the chief activity of their lives.<sup>3</sup>

The actual time spent as a commissioner, however, is not the sole factor that can be considered in this connection. In a few exceptional instances a man has been made a commissioner after long service on the staff of a regulatory body.

The career of Charles D. Mahaffie on the I.C.C. is the clearest case of an intelligent college graduate who finally secured a commissionership through ability and training. Mahaffie was born at Olathe, Kansas, in 1884. He graduated from Kingfisher College and was awarded a Rhodes Scholarship. After three years of study abroad he returned to teach jurisprudence at Princeton for two years. Then he practised law in Oklahoma and in Portland, Oregon. In 1916 his government service began as a solicitor in the Interior Department and his concern with railroad problems began as attorney for the U. S. Railroad administration. In 1923 he became director of the Bureau of Finance in the I.C.C. The way in which he handled the railroads in their financial planning and issuance of securities won their confidence and impressed the Commissioner in charge of his division. His name was considered in connection with several vacancies and it was the quiet withdrawal of Commissioner Woodlock that finally opened the way to his promotion. He has now been serving long enough as a commissioner for his name to be included among the list of career men. Mahaffie was the first to reach the top of the commission ladder from a staff position. Today other commissioners are serving who began their careers in subordinate federal administrative posts.<sup>4</sup>

The facts presented thus far show that a career is possible. Service on federal regulatory bodies has attracted many men of

<sup>3</sup> See Appendices J and K for term of appointments and time actually spent in office.

<sup>4</sup> Two other members of the I.C.C. have careers comparable to Mahaffie's although their tenure has been shorter.

J. H. Marble entered the federal service as legal counsel in charge of the Division of Inquiry on the I.C.C., and after 6 years of this work, became secretary of the commission. He died in office in 1913, a few months after assuming his commissionership.

P. J. Farrell became a counsel for the I.C.C. in 1901; after 18 years he was promoted to chief counsel, and after 10 years in this position, became a commissioner in 1928.

On other federal commissions we find men who seem to have followed career lines of service to commissionerships. Thad Brown was chief counsel for the Federal Power Commission and later general counsel on the Federal Radio Commission.

education and public spirit. Lawyers and professors have found congenial occupation. Experience on state public utility commissions has been recognized and in the case of the most important federal commission, the I.C.C., a high proportion of men with such a background of state service have assumed wider duties in Washington. Yet in the face of these generally favorable factors the actual record shows that few men have found a life career in commission service. That such a career can be attained a few exceptional cases illustrate. That there is no legal bar our review of the statutory basis for service has demonstrated. Consultation with commissioners has indicated that many of them would like to see more able men concentrate all their energies on government service. Why is it that our commissioners have held office for such brief periods?

#### REASONS FOR LEAVING

Our evidence points to relatively few cases where the commissioners have voluntarily deserted their posts in order to fill higher governmental offices. In only two cases do we find commissioners leaving the shelter of the administrative service to seek office in the hurly-burly of campaigning. As a general rule, the commissions have not been disrupted by shifting their directing personnel to the federal departments.<sup>5</sup>

But what of the temptations from without? What cases can be found where a man has relinquished his position voluntarily and left the federal service?

A great deal has been made of the fact that private business has weaned away valued public servants by the offer of more remunerative employment outside the government.

"Such movements from public to private employment tend to make administration in America less perpendicular, less bureaucratic than in Europe, and to immerse it in the general medium of business enterprise which has its special economic opportunities and its code of ethics," Beard writes. "How far this practise makes

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Hampson Gary was a special counsel and a solicitor in the Department of State for several years and Irwin Stewart was an assistant solicitor for two years and in charge of the Division of Radio in the State Department from 1930-1934.

Before their appointments to the Securities and Exchange Commission, Ferdinand Pecora and J. M. Landis acted as special legal advisors on matters closely related to their subsequent responsibilities. Robert E. Healy was the general counsel on the Federal Trade Commission from 1915 to 1934 and his appointment to the Securities Commission is the clearest recognition of the desirability of legal administrative experience as a proper qualification for a commissioner.

<sup>5</sup> See Appendix L for public offices following commission service.



for efficiency in the government and for precision in law enforcement has not yet been subjected to scientific study; but undoubtedly it is a factor of prime importance in the development of federal administrative ideals and aspirations. Obviously, if employees can retire at any time and then use their special information to private advantage, the spirit of the public service is thereby affected, for good or evil."<sup>6</sup>

The point raised by this authority may be properly applied to the members of our independent commissions. Some insight into their attitude toward the office of commissioner as such, may thus be gained. Is it commonly regarded as merely a stepping-stone to something else, or is it looked upon as a career? Has it been the practise for our commissioners to resign in order to make more money outside the government?

For what reasons have our commissioners left their administrative posts? It has been the intention of Congress to make these positions attractive. The desirability of getting good men and keeping them in the service of the government is generally acknowledged. Why do they leave? This is not an easy question to answer. Even where explanations are given, can a clear distinction ever be made between the avowed reason and the real reason?

For some cases the cause is unmistakable. Fourteen commissioners died in office and age or illness accounts for the retirement of three or four others. Ten more were appointed to other public office and twenty-seven, failing to be reappointed, withdrew of necessity. Nine held unconfirmed recess appointments. Two more lost out when their commission was abolished. Forty-two of the 143 commissioners are still serving. This leaves about thirty-six cases where it is possible to inquire into the personal reasons for leaving.

Asking a man "why he resigned from office" is a personal question which he may very properly refuse to answer. H. C. Hall told a Senate committee at the time of the Esch hearings, "I have never let any one know why I resigned." To direct inquiry, other commissioners have preferred not to give a reason for their withdrawal. One commissioner sent the writer a long and thoughtful letter presenting his views and facts about his life. He stated that he offered his resignation four times in two years before it was accepted, but he refused to give reasons for his action. Since his communication was confidential his name cannot be mentioned

<sup>6</sup> Charles Beard, *The American Leviathan*, Macmillan, 1931, p. 330.

here. Obviously in the face of reticences such as this our topic cannot be exhaustively discussed, but in a few cases unequivocal explanations are possible. Thus T. F. Woodlock resigned to return to his financial writing because he felt that the I.C.C. was unduly restrictive of and ungenerous in its rates to the carriers.

F. W. Taussig came to the Tariff Commission and E. R. Black to the Federal Reserve Board with the understanding that they were not to be expected to remain in public office for anything more than temporary service. Franklin Fort went on the Federal Trade Commission as a war duty, and, his health impaired, he left as soon as he could.

Delano withdrew from the Federal Reserve Board in July 1918 in order to enter the military service. Paul Warburg resigned at a time when a senatorial opponent was threatening to raise the question of his German birth. Rumors are, indeed, frequent and sometimes more than one explanation may be offered as to why a man resigns.

It is interesting to note that of the 12 Interstate Commerce Commissioners who resigned, 8 were 60 years of age or over and had served a long time. It may be that they were seeking economic security for their declining years, but if they were after wealth, they had certainly allowed little time for its acquisition and still less chance for the enjoyment thereof.

In general, the men engaging in business after service were simply returning to their former occupation. This has been the case especially for the Federal Reserve Board members. It is true of Sherman Lowell and William Burgess of the Tariff Commission. O. H. Caldwell and H. A. Bellows of the Radio Commission returned to broadcasting. So far as the 143 cases studied throw any light on the question raised by Professor Beard, they show very few, if any, cases where an ex-commissioner has found that governmental service was merely the prelude to a business career. The few educators and journalists are usually called back to their former duties. In general, after leaving the commission, the ex-member returns to the practise of his previous profession.

Whether commission experience has materially accelerated a man's progress in his chosen line of work, it is, of course, impossible to say. There is no way of knowing what he might have done had he not served the government. It can be asserted on the firm basis of our facts that serving as a commissioner has done no man any harm and that practically every individual has been able to

improve his personal situation as a result of the prestige and experience gained in this important administrative work. Certain exceptions might be made for the very few cases where illness has overtaken the official or where his personal fortune has suffered through the pressure of public duties on his time and energies. Such instances are rare indeed. Most of our commissioners have found that their connection with the federal government stood them in good stead and resulted in friendships and knowledge of value.

The cynic might point to several instances where the individual would never have left his home town had not kind fortune under the guise of political circumstances brought him to the capital. The lawyers in most cases remain in Washington and they are the most important class.

The record shows that a former commissioner rarely advances his personal fortunes by resigning his administrative post in order to accept a place of leadership in the business world.<sup>7</sup> His talents and his training are generally not adapted to such work. The common activity for the ex-commissioner is the practise of law in a field closely allied to his administrative experience. An examination of the Washington telephone directory discloses the names of nearly a score of erstwhile commissioners most of whom are practising law in the capital. By no means all of these men withdrew from the government service in order to enhance their fortunes. At least half of these men had failed to be reappointed, and thus of necessity were forced to seek a living at the best means that offered. A lawyer after service on an important regulatory commission has no difficulty in getting wealthy clients. He is much better off than the business man who has cut his former connections in order to serve the government.

Several business men who withdrew after a brief service had never intended more than a brief administrative interlude. They merely took a vacation from their business in order to help organize a commission. The attraction of higher pay cannot be said to have attracted them away since they had never any intention of staying.

When Mr. Roy A. Young left the Federal Reserve Board to become governor of the Federal Reserve Bank of Boston, he placed before a Senate Committee a copy of his letter of resignation in which he explained to the President that "a more remuner-

<sup>7</sup> See Appendix M for chart of private occupations followed after commission service.

ative position was necessary."

Senator Brookhart inquired: "What salary were you getting before you went on the board?"

Mr. Young. "I was getting \$25,000 a year in Minneapolis."

Senator Brookhart. "And you quit that for \$12,000 on the Federal Reserve Board?"

Mr. Young. "Yes, sir."

Senator Brookhart. "What salary do you get now?"

Mr. Young. "\$30,000."

He stated that it had always been "only a question of time when I would leave the board on account of my own financial affairs."<sup>8</sup>

In cases of this sort the expectancy of tenure is necessarily brief. Such incumbents are not weaned away from administrative work since they have never really become administrators. Another set of circumstances of a slightly different sort is illustrated in the following case.

One commissioner's explanation for his withdrawal from the Interstate Commerce Commission is frank and full: "When I went to Washington to take up public service," he states, "I thought I had accumulated an amount sufficient to justify me in turning from the path of a professional career. During the first year on the Commission I paid a tax of considerably more than my salary as a Commissioner on my income for the preceding year. I had important land developing interests. Unfortunately the depression in agriculture interfered with these interests. My inattention to them because of my service on the Commission, resulted in very serious cash losses and I felt called upon again to resume private practice, as I could not afford to continue on the Commission to the exclusion of other things." (Personal letter)

For men who feel the need of very high financial rewards the federal government cannot compete. To secure their services vastly higher salaries must be offered or the statutory provisions relating to financial holdings must be modified. It is debatable whether the federal government should strive to outbid private interests to secure such men. The true rewards of government service cannot be weighed in money returns. Men interested chiefly in such rewards will be happier in competitive business than in administrative work. The best public servants must be attracted by other coin: by the power and prestige of their posi-

<sup>8</sup> Nomination of Eugene Meyer to be a member of the Federal Reserve Board. Hearings before a Subcommittee of the Committee on Banking and Currency, U. S. Senate, Seventy-first Congress, Third Session, January, February, 1931, p. 69.

tion, by the importance of their responsibilities, and by the opportunities of their office for promoting the general welfare. To deny that high calibre men can be held by such inducements is to ignore the handful of able commissioners who in the face of great obstacles have persisted in rendering valuable service in federal administrative posts.<sup>9</sup>

To give financial security to such men is to bolster the whole administrative structure. A former commissioner sent the author the following letter which illustrates our problem:

"While on the Tariff Commission," he stated, "I had several offers of remunerative employment representing private interests, and, as I am a man without means, it was decidedly to my interest to accept one of them. Accordingly, I resigned from the Tariff Commission and accepted a position as Washington counsel and representative of a number of American sugar refining companies. The only business I have engaged in since retiring from public life has been to prosecute my profession as a lawyer." (Personal letter)

This resignation cannot be taken as an example of self-seeking. This commissioner had given all his active years to public office. The fear of a penurious old age is more than a spectre to the honest administrator who has spent his life in the government service. The uncertainty of reappointment is enough to prompt any cautious man to seek security for his declining years. Congress would do well to provide a retirement salary for members of our regulatory commissions who reach the age of 65 after 15 or more years of service as commissioners.

Our survey of the causes for withdrawal shows that the desire for material gain while an important consideration in a few cases is by no means the most frequent reason for terminating service. The facts simply do not bear out the assertion that the attractions of private employment have disrupted our regulatory commissions. No such simple explanation embraces the many personal reasons that motivate commissioners.

It would not only be unfair but untrue as well to say that the members of our federal regulatory commissions withdraw from public life in order to exploit the experience and knowledge that they have gained in government service for the benefit of private interests. To account for the short careers of our commissioners a confused variety of causes must be examined.

<sup>9</sup> Although complete data could not be gathered, Mosher and Crawford in their study of state public utility commissions concluded that a relatively small proportion of the commissioners left the state government service for private utility employment. *Op. cit.*, p. 63.

## CHAPTER VII

### POLITICS AND APPOINTMENTS

IAGO: *Why, there's no remedy: 'tis the curse of service,  
Preferment goes by letter and affection,  
And not by old gradation, where each second  
Stood heir to th' first.*

OTHELLO

The fact is inescapable that many commissioners retire from service because they are no longer acceptable to the administration in power. To explore the ramifications of this point we shall examine first the record of the Senate and then the behavior of our Chief Executives with regard to the appointments and reappointments of commissioners.

There are two types of appointments to consider: those sent directly to Congress and those made between the sessions.

In reviewing the rôle of the Senate with regard to the confirmation of appointments made by the President when Congress is not in session, certain generalizations seem clear. In 58 cases the Senate approved the action of the Chief Executive, while in 15 instances the recess appointment was rejected. In only about half of the appointments that were unconfirmed was the Senate clearly responsible for the appointees not remaining in office.<sup>1</sup>

In the face of this record, we cannot say that the Senate has had much influence upon most recess appointments. To illustrate how this works let us consider the four recess appointments to the Federal Trade Commission that were unconfirmed. The Senate had nothing to do directly with 2 of the 4 unconfirmed recess appointments to this commission. In the case of N. B. Gaskill, President Coolidge did not submit his second appointment to the Senate at all but kept him on the Commission under a temporary term which expired when Congress convened. The case of Abram F. Myers is peculiar: he first received a recess appointment which was unconfirmed, then he was reappointed. "I was challenged," he writes, "upon the ground that, as a special assistant to the Attorney General, I had not prosecuted the so-called Aluminum

<sup>1</sup> For a detailed discussion, see explanation and Tables in Appendix N.

and Baking Trusts with sufficient vigor. I was confirmed by a vote of 50 to 7." (Personal letter.) His next appointment was not confirmed because he resigned from the Commission soon after it was made and Coolidge did not submit his name to the Senate. Accordingly, the only clear case of a recess appointment to the Federal Trade Commission being successfully rejected by the Senate was that of Rublee. The Senior Senator from New Hampshire objected to this appointment.<sup>2</sup> The appointee, an able young lawyer, was one of President Wilson's original appointees and a resident of New Hampshire. He was charged by Senator J. Reed<sup>3</sup> with lobbying for the passage of the Federal Trade Commission Act.

The most sensational case of a rejected recess appointment was that of Esch to the Interstate Commerce Commission. The incident has been treated at length by other writers and only the bare outlines need concern us here. Esch became the victim of a political row between rival sections.

For many years a bitter controversy has raged between the coal producers in northern Ohio and Western Pennsylvania on the one hand, and the coal operators of Kentucky, Tennessee and West Virginia on the other, for the Lake Cargo coal traffic. In 1925 the I.C.C. refused to increase the freight differential for the northern operators. Commissioner Esch concurred in this decision while three of his colleagues dissented. Two years later the case was reopened, extensive rehearings were held and the northern operators this time secured an increased differential which gave them a stronger competitive position. On this occasion Esch voted for the increase.

The Southern operators were dissatisfied, [he writes], and as I had, as they charged, changed my position, as had one other Commissioner, and I was up for confirmation in the Senate in the session following the decision, I was made the victim of their opposition, although no charge against my integrity was made. I had changed my opinion because of a change of condition in the coal industry and the new facts developed as a result of hundreds of pages of new testimony.

The Senators from West Virginia, one of them up for re-election, lead the opposition aided by other Senators from adjoining southern coal producing states. My confirmation became involved in politics. Its denial was urged as a personal political advantage to some members.

<sup>2</sup> Henry R. Seager and Charles A. Gulick, Jr., *Trust and Corporation Problems*, Harper, 1929, footnote p. 533.

<sup>3</sup> *Congressional Record*, Sixty-third Congress, Second Session, pp. 14786-14788.

I was a Republican. The Senate was about evenly divided with Progressives holding the balance of power. Both Senators from my state, Wisconsin, were Progressives. I had not trained with them and could, therefore, not look to them for support. (Personal letter)

It is relatively simple to review the record of recess appointments. These appointees all served for a brief period and thereby left some trace behind them. Political motives came to the surface. But what of the names that were sent to the Senate and rejected in the secrecy of executive session? Since the record of proceedings in these meetings cannot be examined, no full study can be made. We cannot survey systematically all the cases in which the Senate challenged appointees nor can we know the grounds upon which they were rejected.

From the evidence that it has been possible to collect, the conclusion seems justified that the Senate does not usually question the Presidential appointees to federal regulatory commissions. This conclusion is based upon the rapidity with which the Senate passes upon most of these appointees. A study of the time schedule of the Senate suggests that some question was raised in less than fifty instances.<sup>4</sup>

Only three instances have been found of clear Senate rejections of nominations of commissioners as against 150 confirmations. More frequently the names are withdrawn by the President. It has not been possible to get reliable figures on the total number of nominations sent to the Senate and the action taken in every case. From the imperfect statistics available it appears that the Chief Executive is unlikely to submit names to the Senate if he anticipates their rejection. In September 1920, for example, Trade Commissioner W. B. Colver asked the President not to reappoint him because he feared that his confirmation would be denied in the Senate.<sup>5</sup>

It is impossible to discover how many cases of this sort have occurred. No definitive estimate as to the rôle of the Senate with regard to appointments can be made until some accurate measure of its influence is available. Such intangible forces, however, elude dissection in numerical terms. Acting as a body the Senate has not very often intervened to deny the confirmation of an appointee. Ordinarily the President will consider the wishes of a

<sup>4</sup>T. C. Blaisdell, *The Federal Trade Commission*, Columbia University Press, 1932, p. 79.

<sup>5</sup>See Appendix O for time table on confirmation of nominations.



Senator before making an appointment from his state. In certain spectacular instances appointees have been roundly criticized by the Senate. Commissioner Garsaud was bitterly attacked as a pawn of the "power trust."<sup>6</sup> From various known cases a picture can be reconstructed suggestive of the grounds upon which Senators oppose appointees. Frequently these cases reflect mere personal recrimination. The attack of Senator Bilbo upon Commissioner Sykes of the Radio Commission seemed to be of such a nature. It is rare that a man is opposed because of his lack of training or experience. Senator Borah thought that H. P. Fletcher's lack of experience in tariff problems made him an unsuitable choice and Ira Ornburn was criticized for his lack of training; but the Senate confirmed the appointments of both. The party loyalty of an appointee may be challenged. This question was raised in connection with McNinch and Bellows. H. M. Tate was opposed because he was a Republican and came from Tennessee instead of the deep South.

The prior connections of an appointee with special interests is a common cause for criticism: E. B. Brossard and the sugar beet growers of Utah, Paul Warburg and Eugene Meyer and the New York bankers. R. L. O'Brien was regarded by some as too much of a protectionist; F. K. Lane was too "radical."

When Woodlock of New York was appointed to the I.C.C. by Coolidge in 1925, representatives from the South opposed his selection on the ground that their region deserved representation. Senator Underwood stated that President Harding had promised to place someone from the South on the Commission. Upon the advice of Senator Underwood, President Coolidge appointed Taylor of Alabama to succeed McChord of Kentucky. The cry was then raised that this appointment was a bid to secure southern support for the Woodlock nomination. While this case was pending President Coolidge indicated his willingness to consider Pennsylvania as well as the South in filling vacancies. Cyrus Woods was nominated soon afterwards.<sup>7</sup> It was charged that Coolidge was packing the Commission in order to secure a favorable decision for the Pennsylvania coal interests in the Lake Cargo Coal case

<sup>6</sup> Confirmation of Marcel Garsaud on Renomination to the Federal Power Commission. Hearings before the Committee on Interstate Commerce, U. S. Senate, Seventy-Second Congress, First session, July, 1932.

<sup>7</sup> I. L. Sharfman, *The Interstate Commerce Commission*, Vol. II, The Commonwealth Fund, 1931, p. 461.

that was then coming up for a further hearing. Woods had acted as legal counsel for the Pennsylvania Railroad and for the Pittsburgh Coal Company, and although he denied any commitments in the Lake Cargo Coal controversy, he was rejected by the Senate. Woodlock and Taylor were confirmed.

The Railway Brotherhoods raised a brief objection to the appointment of Dr. Walter M. W. Splawn to the I.C.C. because on one occasion in the distant past, he had denied an increase to conductors and trainmen in the West. Letters of protest to the Senate Committee of Interstate Commerce caused this body to prolong its hearings. It soon became apparent that the charges were ill-founded and the Railway Labor Executives Association decided to drop their opposition.<sup>8</sup>

Various commissioners have been challenged for their "subservience" to powerful interests while upon these regulatory boards, but they have not been driven from office for this reason. The renomination of Humphrey to the Federal Trade Commission was opposed by certain congressmen on the ground that the commissioner had used the trade practice conference as a means of driving the independent cottonseed oil manufacturers out of business. C. W. Hunt was criticized by several "progressive" Senators for following the leadership of Chairman Humphrey. The Senate became so incensed over the actions of President Hoover's first 3 appointees to the Federal Power Commission that an effort was made to recall the confirmations already sent in. The opposition in this case also came from the Progressive camp. In general, the challenges to appointments voiced in the Senate come from those who are suspicious of the big business sympathies or affiliations of the nominees. Economic sectional rivalries and class prejudices rather than partisan differences are at the basis of the opposition.

What are the forces that determine the selection of our commissioners? No study of qualifications can ignore the factors that most directly influence the choice of men for administrative service, but no man can state dogmatically the reasons that cause another to act. Very rarely can it be said exactly why a particular appointment was made in a given case. Only the chief participants can give their real motives for acting and even they may easily

<sup>8</sup> The Confirmation of Dr. W. M. W. Splawn, Hearings before the Committee on Interstate Commerce, U. S. Senate Seventy-third Congress, Second Session, January, 1934.

confuse good reasons with real reasons when viewing their actions in retrospect. We shall not attempt to rationalize the irrational or offer neat explanations for the inexplicable. Nevertheless, there are certain common factors that are generally present and that enter into many appointments in greater or less degree. These factors can be analyzed and some estimate made as to their relative significance. Partisan politics, sectional rivalries, class jealousies and economic pressures have entered into the problem of manning our administrative commissions with well-qualified appointees and keeping these men in office. Many pages of the Congressional Record illustrate these struggles.<sup>9</sup>

With the merits of such controversy we are not here concerned but its effect is evident. Congress has accomplished little toward insuring an improved personnel, but its political sniping has discouraged able men from accepting office. Warburg, writing in 1930, stated that "no bankers of any importance, as far as I know, had sought appointment since August 1922" nor did he know of any banker who was urged for appointment by bankers' organizations.<sup>10</sup>

The testimony of Warburg is of particular interest since he was one of the outstanding members of the Board and representa-

<sup>9</sup> The Federal Reserve Board has been the victim of such attacks upon the motives and integrity of its members. On July 19, 1921, Senator Watson introduced resolutions criticizing the Board. The following excerpts illustrate the spirit in which the Board was regarded:

"Whereas the secret, unlawful and ruinous policy of the Federal Reserve Board during the last year has inflicted an irreparable damage of at least \$31,000,000,000 upon the helpless American people by the sudden and colossal retraction of money in circulation without any previous notice to the citizens who were to be disastrously affected by this Wall Street policy; and,

"Whereas the said Reserve Board has loaned to monopolistic profiteers the larger part of the loanable funds of these government banks; and,

"Whereas the said Federal Reserve Board has been insolently heedless to the universal cry of their victims who are the laborers, farmers, merchants and plain common people of our country upon whom depends its future welfare, prosperity, and the defense of the Republic: Be it resolved, etc.,

"That the President of the United States be and he is hereby directed to remove from office immediately after the passage of this resolution the present five members of the Federal Reserve Board and to appoint in their stead, five men who shall not be bankers, but who shall be men of affairs, competent, honest and not mere assiduous servitors of the Morgan interests, the Standard Oil interests, the Steel Trust interests, or any other legalized marauders upon the common people of this republic." The resolution was read twice and referred to the Committee on Currency and Banking (*Congressional Record*, Sixty-seventh Congress, First Session, Vol. 61, p. 4031.)

<sup>10</sup> Paul Warburg, *The Federal Reserve System*, Vol. II, p. 838.

tive of the bankers' viewpoint. "It is to be feared," he writes, "that service on the Federal Reserve Board in the future may be considered as hazard rather than a high honor and that this will exercise a disastrous influence on those who might otherwise accept the financial sacrifice which membership on the board entails."<sup>11</sup> From this same source we have ample evidence of the unwillingness of the banker and business man to undertake administrative duties of high importance in the federal government when this means that they will be opened to political interference and personal criticism. The game is not worth the candle. Warburg goes so far as to suggest that the Senate be deprived of its power of confirmation in order that political pressure be eliminated.<sup>12</sup>

A review of the Senate's rôle in confirming appointments indicates that this body has given little attention to determining the highest positive qualifications for commission service. It has hounded appointees that were good political game. It has looked for the "special interests" behind appointees. It has been more concerned on the whole with the political possibilities of presidential appointees than with the administrative problem of finding and keeping men of the highest calibre and of the most pertinent experience.

### THE PRESIDENT AND APPOINTMENTS

In making appointments the President is engaged in an act of policy. His conception of the purpose and function of a particular commission is exemplified in the men he selects to administer this agency. Qualifications have been predicated in large measure upon the Presidential attitude toward independent commissions as a form of government.<sup>13</sup> Explicit theories entertained by the Presidents from Cleveland's time with regard to the independent commission are not to be found. A scrutiny of biographies yields very little information on this point.<sup>14</sup>

<sup>11</sup> *Ibid.*, pp. 775-6.

<sup>12</sup> *Ibid.*, p. 479. One writer states that the President "should be freed from the necessity of Senatorial confirmation of appointments, not because it is in itself of great importance, but as a means of weakening the spoils system." D. W. Brogan, *Government of the People*, Harper, 1933, p. 382.

<sup>13</sup> For a general discussion of tenure, see James Hart, *Tenure of Office Under the Constitution*, Johns Hopkins Press, 1930, *passim*.

<sup>14</sup> Cleveland appointed to the I.C.C.: W. L. Bragg, T. M. Cooley, M. R. Morrison, C. A. Prouty, A. Schoonmaker, A. F. Walker and J. D. Yeomans. The Harrison appointees were M. A. Knapp, J. W. McDill, J. C. Clements and W. G. Veazey.

McKinley is responsible for W. J. Calhoun, G. W. Fifer. He reappointed J. C.

Since such commissions did not become numerous enough to be important until Wilson's administration, the Presidents preceding need not be considered. Inasmuch as Wilson had sufficient confidence in the commission form of administrative organization to urge the creation of the Federal Trade Commission, the U. S. Tariff Commission, and the Federal Reserve Board, his support of administration by independent commissions is self-evident. He was so careful not to interfere that he was accused of indifference toward the Federal Reserve Board. He acted in this way because, as he explained to Senator Glass: "The very moment I should attempt to establish close relations with the Board, that moment I would be accused of trying to bring political pressure to bear."<sup>15</sup>

However scrupulous a President may be he cannot remain entirely objective. His appointments are bound to reflect his own political policies in greater or less degree. The attitude of some business interests toward President Wilson's appointments to the Federal Trade Commission illustrates the fact that politics and appointments are closely wed. An important journal at the time of these appointments commented:

Mr. Wilson has during his term of office displayed great ingenuity in unearthing men who act and think as he does himself and who imagine they are fulfilling their highest usefulness when they echo everything he says. Like the President, they can be blind when they do not want to see, or yet again, in the exercise of a fertile imagination, they can equal the President in conjuring up things which have no existence at all.<sup>16</sup>

While Wilson's appointments have been criticized on grounds of policy, he was not accused of selecting men merely on the basis of personal friendship. This is more than can be said for his successor. As vice-president of the Federal Reserve Board's Advisory Council, Paul Warburg had occasion to intercede directly with President Harding. He describes his experience as follows:

I saw President Harding several times and tried in vain to impress upon him the irreparable damage that might be done to the Reserve System if

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Clements and J. D. Yeomans. T. R. Roosevelt placed upon the I.C.C.: E. E. Clark, F. M. Cockrell, J. S. Harlan, F. K. Lane and reappointed G. W. Fifer, C. A. Prouty, J. D. Yeomans and J. C. Clements.

Taft appointed C. C. McChord, B. H. Meyer, and reappointed J. S. Harlan and F. K. Lane.

<sup>15</sup> Carter Glass, *An Adventure in Constructive Finance*, Doubleday Page, 1927, pp. 271-272. Wilson made similar comments about his relations to the I.C.C. See W. M. Daniels, *American Railroads*, Princeton University Press, 1932, p. 83.

<sup>16</sup> *Commercial and Financial Chronicle*, February 27, 1915, p. 676.

a governor of the board who had performed his duties faithfully and courageously and who had served the country at great personal sacrifice, were driven from office. . . . In the place of Governor Harding, who was not reappointed, the President nominated and appointed as governor, Mr. Crissinger, whom he had previously appointed as Comptroller of the Currency. Mr. Crissinger was a lawyer by training; his banking experience had been gained largely through his connection with a banking institution in Marion, Ohio. He had but little training in American commercial banking and none in international finance.<sup>17</sup>

Under President Harding there did not remain among the appointive members a single banking expert, and this at a critical juncture when heavy demands were being made upon the Board for leadership in the restoring of credit. Harding's record for appointments was not improved in the case of the U. S. Tariff Commission. Here again he accommodated friends and associates.<sup>18</sup>

In appointments to the Interstate Commerce Commission during the Coolidge Administration, "questions of personal fitness which should clearly dominate in matters of appointment, were unduly subordinated to extraneous political considerations."<sup>19</sup> The President's appointments to the Federal Trade Commission were clearly made with attention to policy. He was determined to give "more constructive purpose to this department."<sup>20</sup> His appointments changed the policy of the Commission.

The President had serious difficulties with the members of the Federal Tariff Commission. Commissioner Costigan's open letter to Senator J. T. Robinson of Arkansas provides a most extraordinary bit of documentary evidence as to how the terms of two members of the Tariff Commission were cut short.

On September 8, 1934, [Costigan relates], in the midst of President Coolidge's campaign for reelection, Commissioner Lewis was asked to call at the White House with reference to his reappointment. With the invitation came the statement that, if reappointed, Commissioner Lewis was expected to leave at the White House a blanket letter of resignation from the Commission for use at any time by the President. In fact, Commissioner Lewis was handed the form of resignation President Coolidge himself was said to have dictated for Commissioner Lewis' signature.

Commissioner Lewis' sworn and uncontradicted statement is that, during his visit that afternoon with the President, the latter asked whether he had

<sup>17</sup> *The Federal Reserve System*, Volume II, footnote, p. 446-447.

<sup>18</sup> F. W. Taussig, *Tariff History of U. S.*, G. P. Putnam's, 1930, pp. 523-524.

<sup>19</sup> I. L. Sharfman, *op. cit.*, Vol. II, pp. 461-462.

<sup>20</sup> T. C. Blaisdell, *The Federal Trade Commission*, p. 78.

brought his resignation. Commissioner Lewis, whose official attitude was always unflinchingly frank, and disinterested, replied in the negative. He further told the President, in substance, that the latter was free to destroy the appointment credentials he was starting to sign. The President, however, insisted on delivering to Commissioner Lewis a temporary appointment, good only until March 4, 1925, the end of the approaching session of Congress. When so doing the President advised Commissioner Lewis that the latter would hold office in any event only at the President's pleasure.

On March 4, 1925, President Coolidge allowed Commissioner Lewis' temporary appointment to expire without reappointment or further notice. Thereafter Commissioner Dennis, a protectionist Democrat and long-time acquaintance and friend of the President, was named to succeed Commissioner Lewis. Some two months later, on May 17, President Coolidge appointed Commissioner Culbertson United States Minister to Rumania. Thus two of the Commissioners who had scientifically discharged their duties in the sugar investigation were eliminated—Commissioner Culbertson by promotion and Commissioner Lewis—a faithful and incorruptible official who merited reappointment—by demotion.<sup>21</sup>

Coolidge did not feel that he could leave the Tariff Commission entirely free to exercise its discretion in selecting products for investigation.

Hoover had his difficulties with the Senate in his appointments to the Federal Power Commission, but there is little evidence that this believer in commissions seriously interfered in the work of these agencies. F. D. Roosevelt has avoided an appearance of discord with the commissions with the notable exception in the case of Commissioner Humphrey. By removing this official, Roosevelt attempted new possibilities in Presidential control of these "independent" agencies. The Supreme Court ruled, however, that his constitutional powers did not extend to ousting officials engaged in work of a judicial nature. By this decision Presidential intervention is admissible only in making appointments and reappointments.<sup>22</sup>

#### REAPPOINTMENTS

Our examination of tenure pointed to the conclusion that the time element is but one phase of a larger problem which must be approached in broader terms. Tenure of office cannot be isolated for statistical study because it is meaningless if separated from "politics." The letter of the law as to the length of service means

<sup>21</sup> Letter to Senator Robinson, *Congressional Record*, Seventieth Congress, First Session, pp. 4733-4735.

<sup>22</sup> Rathbun vs. United States (295 U.S. 602).

almost nothing; the spirit in which it is applied means everything. Is reappointment to office a well-established practice?<sup>23</sup>

The Interstate Commerce Commission is really the only commission where the principle of reappointment has been followed by our Presidents with any degree of consistency. Down to the present time 43 men have been appointed to this Commission and 26 of these have been reappointed. The outstanding authority on the I.C.C. has stated that "the established tradition of reappointment of commissioners has contributed in marked degree to the commission's standing as a skilled, experienced and impartial body."<sup>24</sup>

A review of the other commissions shows how unusual it is for a President to reappoint commissioners. Ten men were reappointed to serve on the Tariff Commission but in only two cases do we find a President of one party reappointing a commissioner of the opposite party when this commissioner was the original appointee of a President of this same opposing party. Thus President Wilson selected T. W. Page, a Virginia Democrat, and President Hoover reappointed Page—but this is the rare exception. The only other cases are those of two Wilson Democratic selections, C. S. Hamlin and A. C. Miller, who were reappointed by President Coolidge to the Federal Reserve Board.

A tradition of reappointment would be a great establishing influence, but the record is weakest here. The treatment of the I.C.C., however, suggests that there is no inevitable bar to a habit of reappointments. The reorganizations and uncertainties in the histories of the Tariff Commission, the Power Commission and the Radio Commission are one explanation for the lack of continuity. Such conditions discouraged reappointments. Continuance in office is not an absolute good. The goal to be sought is the maintenance of only those men who have proved their worth and thus merit reappointment.

It is astigmatic to look upon "politics" as an evil force that intervenes at inconvenient times and throws obstacles in the path of "good men" trying to do their duty. A longer perspective is necessary. Petty favoritism and the appointment of men whose qualifications would not stand critical scrutiny can be found. But the problem is at bottom much more fundamental.

<sup>23</sup> See Appendix P for table of appointments and reappointments.

<sup>24</sup> I. L. Sharfman, *The Interstate Commerce Commission*, Vol. II, p. 459.



These commissions are dealing with problems that are the business of Congress and the President as well as the officials directly concerned. Politics in the broad sense cannot be kept out because national policy is deeply involved. For example, Warburg, as a professional banker, looked upon the Comptroller as a politician and, therefore, ill-qualified to deal with our federal banking policy. But can this problem be left entirely to experts? The classes and sections that feel they have a direct stake in the nation's credit system are not going to surrender control to any body of administrators however well-trained and intelligent.

Unless these administrative agencies are accorded protection by the President and Congress, they cannot function as independent and expert bodies. There is constant danger of a gulf developing between the policy of the Chief Executive and the policy being pursued by the independent commission. If the President persistently interferes, the commission must either meekly follow or very serious friction will result. The uncertainty as to the relationship between the Tariff Commission and the Chief Executive gave rise to exactly this situation.

The right to appoint and to threaten not to reappoint are the only direct powers that the President has over the members of these independent commissions. With these limited powers, the Chief Executive must strive to preserve harmony.

The failure to reappoint may have as important political implications as a new appointment. When the time came around to consider the reappointment of Cox to the Interstate Commerce Commission, a Pittsburgh paper pointed out that "the failure to reappoint Commissioner Cox would remove from the commission a member who cast his vote against the claims of the Pittsburgh district . . . when 6 negative votes of the 11 members of the commission decided the case against Pittsburgh's demand for a fair readjustment of rates." Cox was not reappointed. He was not one of the best qualified men to serve on the commission but it is safe to assume that other considerations of a more political sort had a part in bringing about his removal.<sup>25</sup>

Sectional politics have unfortunately entered into the composition of the I.C.C. How is a line to be drawn between a proper recognition of the needs of a region and a weak surrender to sec-

<sup>25</sup> Confirmation of J. J. Esch, Hearings before the Committee on Interstate Commerce, U. S. Senate, Seventieth Congress, First Session, February, 1928, p. 129.

tional clamor? A President would certainly be justified in discouraging any one section from seeking to advance its interests through insisting that a regional representative be appointed to serve on any commission supposedly quasi-judicial in character. The task of the Chief Executive is to find men who combine qualifications of intrinsic fitness for the post with elements that also make them good selections politically.

In the regional origin of an appointee a President may at times find an element of great value. In the qualifications of M. S. Eccles, President Roosevelt found qualifications of great usefulness—and not the least of these was the fact that the new governor of the Federal Reserve System hailed from a spot far distant from Wall Street. Eccles' great business success in the West joined with his ardent support of Roosevelt and his thorough-going New Deal economics made him an ideal man. Qualifications of this sort cannot be overlooked. They are undoubtedly political but policy is inherent in positions of such importance. Presidential policy is bound to be reflected in the type of men placed upon these commissions and boards.

The political interference that warrants criticism is the petty, personal, and partisan. Controlling commissioners by the use of subterfuge, such as demanding an undated letter of resignation is reprehensible. Undercover manipulation should not be substituted for responsible executive action. The Chief Executive must try to keep these independent regulatory bodies in general harmony with his program but his task is never easy.

Neither President, Congress nor commissions have a common starting point. In Great Britain ministerial government insures that all those in strategic positions will be members of the same party. *Expertise* and continuity in administration is provided by a competent corps of permanent officials. All questions of policy are integrated through the party in power.

A different approach is attempted in this country. Continuity is sought by providing for overlapping terms. There is no point at which all our Senators, commissioners, and other administrators start off "at scratch." Expertness and leadership in policy are often expected of the same individual. On our regulatory commissions appointees are generally expected to have some expert knowledge of their administrative duties and they must be politically acceptable to the party in power. Thus we find that ap-

pointments to our so-called independent non-political commissions depend in large measure upon political pull. Such influence is by no means the sole consideration. This would be far too simple an explanation; but the fact remains that without the proper friendships or connections no man goes far in American politics. Merit alone is not sufficient. The recruitment of our commissions displays an interplay of political expediency and solid individual worth.

Occasionally documentary evidence is found of just who helped who and when. Testifying before a Senate committee, Commissioner Sykes of the Federal Communications Commission said:

Senator Harrison and Senator Stephens had both endorsed me for appointment on the Federal Radio Commission, and I am sure their endorsements had a great deal to do with my being appointed.<sup>26</sup>

Sykes' colleague, Thad Brown, when questioned, stated that his appointment was sponsored by former governor Cox of Ohio. The two had long been friends although of opposite parties. It is interesting to note that the former governor soon became interested in radio broadcasting and sought construction permits and licenses from the commission. He paid \$85,000 outright for the stock of a station in Erie, Pennsylvania.<sup>27</sup> Colonel Brown was President Hoover's primary campaign manager in Ohio and chairman of the Hoover-for-President committee in that state.<sup>28</sup>

The skeins of selfish interest and personal friendships cannot be disentangled from the more tangible strands that lead a man into public office. Commissioner Brown was general counsel on the old Radio Commission for two and a half years and a commissioner for a similar period. His qualifications made him a logical person to retain when the new Communications body was established. To purely partisan considerations must be added personal friendships and family ties as adjuncts of significance in the procuring of appointments.

The value of having adequate qualifications plus the right connections is very well illustrated in the recent appointment of

<sup>26</sup> Confirmation of Members of the Federal Communications Commission, Hearings before the Committee on Interstate Commerce, U. S. Senate, Seventy-Fourth Congress, First Session, 1935, p. 33.

<sup>27</sup> *Ibid.*, p. 71.

<sup>28</sup> Nomination of Thad H. Brown, Hearings before the Committee on Interstate Commerce, U. S. Senate, Seventy-Second Congress, First Session, February, 1932, p. 7.

Carroll Miller to the Interstate Commerce Commission. This appointee is a man of substantial accomplishment. He is a highly successful business man and a consulting engineer of reputation. He is also the brother-in-law of Senator Joseph Guffey of Pennsylvania. His sister is the national Democratic chairwoman of the state. When Miller's name was brought up, Senator Neely scrutinized this nomination in order to be sure that Miller had made no commitments with regard to the Lake Cargo controversy. The appointee stated that he knew nothing of this burning issue except what he had gleaned from the newspapers. He had a long experience as consulting engineer in gas, electricity and water, but had not concerned himself with railroad problems. He had made no wrong commitments.<sup>29</sup>

The data gathered on 143 commissioners indicates that these men were recruited from a broad cross-section of the nation. There is a wide sectional distribution of appointments, a balance between the two parties and no clear class lines. Among the commissioners are men from all social strata, although they seem to reflect a general middle class background. These factors, while offering no positive qualifications for service, indicate the remarkable degree to which the recruitment of this group of federal officials harmonizes with the traditional pattern of American life. Some of these commissioners were "self-made" and many apparently won distinction by their own efforts and ability. A few well qualified young men have been appointed and several valuable public servants in both the state and federal services have been promoted to commissioners. Scholars and men of action whether in politics or business have shown their ability to work together. The proportion of college trained men is on the increase.

Against these hopeful signs the fact must be acknowledged that often men of meagre training or experience are appointed. Even the able commissioners would seldom have attained to their positions without political connections.

The pattern of appointment that has evolved in this country is best exemplified by noting the career of a recent able appointee. In the case of Dr. Walter Splawn we find political contacts interwoven with an excellent background of training and experience. He was President of the University of Texas from 1924 to 1927

<sup>29</sup> For a full factual statement of his career, see *Railway Age*, June 17, 1933, p. 876.

and two years later he became Dean of the graduate school of the American University. Positions of this sort while academic in title afford ample opportunity for the development of administrative technique.<sup>30</sup> The President of a large state university must handle politicians, farmers and business men as well as students and professors. Versed in economic theory and transportation problems, Dr. Splawn brought this knowledge into practical use as a member of the Railroad Commission of Texas. In 1927 he acted as chairman of an arbitration board in a railway labor dispute. He next served as referee under the War Settlement Claims Act in Washington. For several years he acted as special counsel to the House Committee on Interstate and Foreign Commerce. This work involved a special study of holding companies in the railroad industry and also participation in framing the Emergency Transportation Act of 1933.

This experience and training plus the fact that he came from the "right" part of the country made him a logical choice in 1934. Dr. Splawn in unique degree combined favorable qualifications: theoretical knowledge was joined with practical experience in railroad and administrative affairs. In addition to this he was well known to the members of an influential committee of Congress and he came from a section of the country that was due for representation. It is this blending of what is politically expedient with much that is intrinsically sound that characterizes the present method of recruiting our federal commissions.

Political connection is no bar to the appointment of able administrators. The President must seek advice in filling the many vacancies in the federal service. If he can strengthen his own position at the same time that he appoints an able man—well and good. That politics can ever be banished from Presidential appointments is too much to hope for. But it is not empty idealism to insist that the President put the best interests of the administration before the demands of mere political expediency. This has been possible in most appointments to the I.C.C. Professor Sharfman states:

<sup>30</sup> For further details, see *Railway Age*, January 20, 1934, p. 85 and Confirmation of Dr. Walter M. W. Splawn, Hearings before the Committee on Interstate Commerce, U. S. Senate, Seventy-Third Congress, Second Session, January, 1934. For a discussion of the pertinence of academic experience for administrative work, see W. Y. Elliott, *The Need for Constitutional Reform*, McGraw-Hill, 1935, p. 224 ff.

No positive qualifications for office being prescribed by statute, there is ample freedom, in the exercise of this executive function, to select and approve men clearly capable of performing the difficult and onerous tasks with which the Commission is charged; and, in point of fact, the personnel of the Commission, despite such unevenness as characterizes all governmental agencies, has on the whole measured up to very high standards of public service.<sup>31</sup>

Scholars who have carefully studied the I.C.C. and the Federal Trade Commission stress the evident effect of the qualifications of the commissioners upon the character of administrative work. In the opinion of one writer, "the quality of the men who sit upon the Federal Trade Commission and the Interstate Commerce Commission, may furnish a clue to the very different success of these bodies as authoritative agencies for the regulation of trade and commerce." The author continues:

The orders and reports of the Interstate Commerce Commission from the very beginning reveal a careful and expert consideration of subject-matter and the excellence of its personnel has been the subject of much professional comment. The reports of the Federal Trade Commission show a lack of vigor in administration, and then there is the failure to press necessary legislation, the non-committal exposition of difficulties encountered, and the unprotesting turn toward other duties than authoritative regulation of competitive practices.<sup>32</sup>

Members of the Interstate Commerce Commission are generally agreed that political expediency, while doubtless affecting the appointment of some commissioners, has not in any serious way disrupted the work of this body. One former commissioner, whose service had been unmistakably terminated because of political enmity, stated that, although political pressure was attempted on quite a number of occasions, he saw no evidence of its influence upon his colleagues during his seven years on the Commission. "All in all," another commissioner stated, "I believe that political expediency has been the motive in making appointments to the Interstate Commerce Commission to a lesser extent than in making other governmental appointments." This conclusion is borne out by the opinions of those consulted on other commissions. Members of the Federal Trade Commission, the Tariff Commission and the Federal Power Commission freely admitted that political fa-

<sup>31</sup> I. L. Sharfman, *The Interstate Commerce Commission*, Volume II, p. 459.

<sup>32</sup> Carl McFarland, *Judicial Control of the Federal Trade Commission and the Interstate Commerce Commission, 1920-30*, p. 176.

voritism had in too many instances placed poorly qualified members on these important boards. It is evident from this contrast between the I.C.C. and other regulatory commissions that political considerations are not regarded as in any sense inevitable obstacles to manning our commissions with good men. Those closest to the scene agree that the Interstate Commerce Commission points the way to a goal that is not unattainable.

Our experience with regulatory commissions is still brief. We must work out the sphere of competence for our commissioners. Until the duties of a commission are clearly envisaged it is impossible to determine the proper qualifications of the men who are to undertake this work. Hence our Presidents have often been unwilling to appoint men of independence and power. They did not want these commissions to get out of hand!

## CHAPTER VIII

### THE BEST QUALIFIED COMMISSIONERS

FALSTAFF: *Let time shape, and there an end.*

HENRY IV PT. II

What should be the qualifications of those who serve on our regulatory commissions? The student cannot presume to issue *a priori* requirements from the seclusion of his study as to the kind of men needed for the arduous duties of business regulation. The problems cannot be met in purely idealistic terms. What should be must be measured in the light of the practical demands of a given commission at the time a vacancy occurs. The talents and training of an appointee must be appropriate to the situation thus presented. To recognize the inevitability of such pragmatic standards does not rule out the value of all broader speculations. While the ideal appointee in any single case is the one best fitted to meet demands of that particular job, the filling of many positions over a period of time has provided a background of experience by which future actions may be guided. Those best acquainted with this background are the veteran commissioners themselves. The student can construct from their collective experience criteria for judging the qualities most valuable in commission service.

What are the proper qualifications for service on our independent administrative commissions?

In seeking the answer to this question several score of those who are serving or have served upon various administrative commissions were consulted. They responded with the understanding that their communications were confidential. These commissioners spoke freely and gave their views from the wealth of their practical experience. We shall try to present here a composite picture built up out of the many points stressed in letters and interviews. This can be done since few irreconcilable statements were made, although different individuals stressed one point rather than another. It was quite generally agreed that the question of "proper" qualifications is a very difficult one to answer. Intelligence, high moral purpose and a profound concern for the gen-



eral interest are of basic importance and are so obviously essential that they must be assumed as necessary characteristics for any appointee. Qualities such as honesty, courage, industry, good health, etc., are as a matter of course, held to be desirable. Speaking in these broad terms, however, adds little to clarifying our problem. With such vague virtues no one can cavil. Can the search be narrowed down to elements more tangible?

What kind of a man is best suited to serve on a commission? Here temperament is the first consideration. As one official stated: "A successful member of any commission must be commission minded, that is, be capable of cooperating with other people." He must not be the kind that "knows it all." He must be studious, deliberative, and keep an open mind for facts. In different words this viewpoint is expressed many times. The ideal commissioner is one who possesses a broad understanding of men and affairs, judicial poise, industry of a high order and patience in the study of details. He must be firm in interpreting the general welfare and steadfast against economic or partisan influence. He must have a wide knowledge of the field over which his jurisdiction extends acquired through careful study and also through some practical experience.

It is when we pass from the general to the concrete that our difficulties begin. Yet it is in these latter terms that we must deal in considering appointments. A former Radio Commissioner points out that the original Commission was made up of an Army radio expert, a Navy radio expert, a "practical broadcaster," a radio editor and a State Supreme Court judge. Later appointments to this body, he notes with regret, failed to take into account engineering and radio experience. The absence of a single qualified radio engineer on the new Communications Commission is deplored.

When the Radio Commission first undertook its duties, it was necessary for the Commissioners to understand the limitations and eccentricities of the spectrum and the physical characteristics of wave lengths if they were intelligently to regulate broadcasting. As the technician has attained a greater degree of control and understanding of radio engineering, the Commissioner's task is simplified. Technical competence on the part of the "regulator" becomes of less importance as the skill of the engineer increases. As interference on the air is eliminated by the technician, the

burden of the official is lightened. Striking evidence of this is offered by one of the few I.C.C. Commissioners who has worked his way up to this position by long service on the staff and a life-time acquaintance with railway problems. According to this official, a knowledge of railroad operation, railroad rate making and railroad financing are desirable, but by no means essential qualifications. In his opinion, the scope of the work and the authority of the Commission are so broad that the field cannot be covered in any course of preliminary technical training. "Some of the ablest Commissioners have been lawyers, economists, or business men without special training in matters relating to the work of the Commission prior to their appointment," he states. "Willingness and ability to stand hard work and a sincere desire to serve the public, I should say, are primary qualifications."<sup>1</sup>

In amplification of this same point another Commissioner writes: "The broad and analytical mind is the *sine qua non* of qualification. Given that ability, one can comparatively soon learn the necessary statutory law, and I do not regard it as at all essential that one should have had experience in the technicalities of freight rates any more than in the mechanics of a locomotive engine. The Commission has employees who are experts in these various departments from whom the Commissioner with the analytical mind can get the necessary technical details. His is the duty of broadly applying the technical knowledge to his administrative, quasi-legislative, and quasi-judicial work."

Another ex-Commissioner of long experience states: "I think it important that the Commission should always have a goodly proportion of lay members. Previous experience on State Commissions or as students of transportation is important and valuable, but the most important single qualification is being blessed with a public viewpoint and with a zeal for the public interest."

The approach to our problem exemplified by the opinions of these Commissioners does not overlook the fact that a lawyers' or economists' training may be helpful, but it stresses the point that such considerations are not of primary importance. The specialist is not the best commissioner. But it is essential that each commissioner should have the capacity, by his own intelligence,

<sup>1</sup> All the statements by Commissioners in this chapter are quoted from personal letters.

general education, and experience to speak the language of the experts and to understand their work. To the extent that a knowledge of the law, of engineering, of accounting, of economics, of commercial geography or of statistics contributes to better appreciating the problems of subordinate experts, the better will be the relation between the commissioner and his staff. His function, however, is that of supervision, inquiry, criticism, and direction. He must be able to understand and interpret evidence and arrive at a clear judgment based upon the work done by others.

This viewpoint is well summed up by a member of the Interstate Commerce Commission. He states: "On the whole, I am inclined to believe that any well-rounded man of broad vision and entirely free from any bias or feeling as between the railroads and the public generally, is the ideal commissioner. If he comes to the commission with an open mind and sound judgment, he can soon learn what it is in a sense his specialty, as the commission is able to command on its staff technical men, competent and able to advise so that the commissioner himself is often better able to judge of any given proposition than if he had had the technical experience."

Several of the officials consulted threw some light upon our problem by indicating the factors disqualifying a man for service on an administrative commission. "Half-educated men, men without sufficient equipment to understand statistical methods, men living in economic mare's nests, men professing doctrinaire social theories, all that class of people should be avoided," one former member of the Tariff Commission stated. The views as to the negative aspects of qualifications complement the opinions as to the positive characteristics. The man holding to hard and fast theories and dominated by his pre-conceptions as to social or economic policies is the man to avoid. A former Federal Trade Commissioner makes certain categorical exclusions as follows: no newspaper men, no lame-duck congressmen, no corporation lawyers, no economic faddists, no publicity seekers, no self-righteous persecutors. With the three latter cases, no one could take exception since by very definition their sins are placed upon their heads. Banning men in particular occupations, however, is as questionable a way of determining disqualifications as basing the choice of appointees upon mere membership in certain accepted professions. In the final analysis, the problem comes down to finding traits of

character and a degree of understanding and intelligence that is appropriate to the task to be performed. Qualifications then are always relative to the responsibilities and the peculiar demands of the position. Some professions are more closely allied than others to the work of certain commissions and hence training in such professions may be taken as a correlative bit of evidence as to fitness. But this is by no means an infallible guide.

No single measure of accomplishment can be relied upon in arriving at this judgment. As one ex-Commissioner in discussing this point, said of his colleagues: "The late Edward E. Clark will always be regarded as one of the great Commissioners. In his early days he was a railroad conductor and was head of the Brotherhood of Railroad Conductors when President Roosevelt appointed him Assistant Secretary of Commerce. He never had any experience in traffic matters or as a member of any public commission. No report written by him was ever reversed by the Supreme Court. On the other hand, Commissioner Prouty, the father of the Valuation Act and one of the authors of the 'analysis of method,' adopted by the Commission for its guidance in dealing with valuation cases, had much experience with transportation problems before his appointment and was a good lawyer—and a number of his reports were reversed by the Supreme Court."

Criteria of this sort have no pertinence in a discussion of qualifications. We may agree with the High Lord Chancellor of Iolanthe that "the law's the true embodiment of everything that's excellent," but we must also add that the Supreme Court like the High Lord Chancellor "embodies the law." One may also hazard the remark that Mr. Clark's success as a Commissioner was not due to the fact that he had been a railroad conductor, but rather despite the fact that his early education and training were limited. Clearly his innate ability was so great that he overcame the handicaps of his youth. On the other hand, the correlation between Mr. Prouty's previous experience and his work on the Commission is clear. Developing a systematic conception of qualifications can only be done by seeking such correlations. The task is one of separating the relevant from the irrelevant. And the pertinent factors can only be evaluated in terms of the clear and recognized function of a given commission.

A general rule based upon the collective opinions of the commissioners consulted would be along these lines. Broadly speak-

ing the properly qualified appointee is a man of judicial rather than of a doctrinaire frame of mind; he has an understanding of public affairs and some general knowledge of the economic and legal approach to governmental problems; he is not closely identified with an outside interest that would affect the objectivity of his decisions.

It is not possible to go beyond this when speaking in general terms. Further qualifications appear clearly when the individual member is taken in relation to the needs of a given commission. These needs can only be determined, however, in relation to the characteristics of those members already serving on the board and the contributions they are making to its collective wisdom.

It is desirable, therefore, to consider not only the proper qualifications for service on administrative commissions, but also the qualities appropriate for the commission as a whole.

The ideal commission is composed of men who each contribute some share of special understanding to the various problems with which the commission as a whole must deal. A member of the Federal Power Commission, for example, states that his commission needs a membership of diverse experience because of the varied functions and activities of this agency. "At least one of the members should have broad legal experience, one or more members should have had professional training in economics or engineering. While it is not necessary in my opinion, that any of the members should be technical experts, as these requirements are fully covered by the provision for a highly trained staff, it is desirable that various members of the Commission should be capable of understanding and exercising supervision of the legal, engineering, and accounting divisions." With regard to the Tariff Commission a similar viewpoint is expressed. One of the present Commissioners states: "Persons of different training and experience should be appointed to the Tariff Commission." But this does not mean the appointment of specialists. "The Commissioners could not very well be commodity experts, nor could they very well be accountants. It is doubtful whether it would be wise to prescribe that they should all be economists." This is the opinion of a former member of the Commission and it is given added weight by the fact that the most outstanding economist ever to serve on the Tariff Commission stresses "common sense" as a qualification of more importance than economic *expertise* for a

commissioner. Training in economics and statistics, information about industry and agriculture, a knowledge of transportation and law—all these factors are important in enabling the commission as a whole to face its responsibilities and to deal with the experts on the staff.

At the present time the consensus of opinion seems to be that our regulatory agencies should be *balanced* bodies. Their makeup should include members who represent various backgrounds and viewpoints. The ideal, therefore, is to secure at best a synthesis or at least an equilibrium of different kinds of expertness and social attitudes. This view was well expressed by a member of perhaps our most important federal commission. "In my opinion," he stated, "the Interstate Commerce Commission should be composed, as it is, of persons from different lines of work and professions. Members should also be selected from the various parts of the country. At the present time there are included in its membership two or three who have been college professors, four or five who have practiced law, two who have held judicial offices, at least two have had many years of service in the railroad industry, at least one engineer, and three or four who have had experience on state regulatory commissions." Following the logic of this view, the ideal commission combines in its membership representatives of several professions or disciplines in order that expert opinion and supervision may be available. Former Commissioner Joseph E. Davies tells of discussing at length with President Wilson the original conceptions as to the qualifications for membership on the Federal Trade Commission. "It was then decided by President Wilson," he writes, "that three members should be men of legal training and experience, and that two members should be men of broadest possible business or industrial experience. It was also determined that the personnel should be chosen from different parts of the country and different industries in order that the broadest possible viewpoint might be the result of the combined judgment of the whole commission. The law itself provided that the membership should consist of members of both political parties."

This conception of a commission as a balanced body should not be interpreted to mean that *spokesmen* for definite sections, classes, occupations and parties should compose these administrative agencies.

One ex-Commissioner, looking back over his experience on the Radio Commission, came to the conclusion that the ideal commission for regulating communications would include two lawyers, three members acquainted either through experience or special training with the field to be regulated and two members who were neither lawyers nor technicians but who possessed good judgment and a broad outlook. They should have "vision" and all the members of the commission should have "courage and integrity."

We want good men but we are unable to define virtue. Of course, it may be that the question is unanswerable in direct terms. We do not know just what sphere is proper for these commissions. We dare not make them purely expert bodies because we distrust experts; we dare not lease them to lawyers because we recognize the limitations of the legal approach; we dare not place men of vision in command because we know not where their visions may take them. By a course of trial and error, with little agreement as to the ultimate goal, individuals of the most assorted talents and weaknesses have been placed upon these important boards.

The fact that stands out most clearly is this: that we can do no more than state in general terms the qualifications that are desirable for commissioners. These terms are not without meaning but their meaning cannot be readily transferred into tangible requirements in making appointments. From the collective experience of many commissioners consulted, it is impossible (as many directly stated) to lay down any set of qualifications which could be made the basis for statutory instructions. It would be difficult to deliberately develop commissioners with these qualifications. Nevertheless, men approaching these ideals have been appointed to our commissions. The problem is to find more such men and to keep them in the government service.

The members of our federal regulatory boards are widely recruited. But this process is almost casual in its lack of system. Little consideration is given to increasing the internal strength of the commissions. Great emphasis has been placed upon pleasing groups or sections that are politically powerful. Moreover, our Chief Executives have habitually appointed men whose views harmonized with their own. These tendencies are inevitable and in large measure desirable. They should not, however, override the need of strengthening our regulatory commissions. The record of the past shows that too few of our commissioners have been able

to devote the best years of their life to government service. The records of Eastman, Aitchison and Meyer on the I.C.C. and of Page on the Tariff Commission prove the value of developing on each of our federal commissions a nucleus of career administrators. Men of this character form an internal brace that gives strength to the whole administrative structure. One of the wisest men now serving on the Interstate Commerce Commission recently stated: "The ideal interstate commerce commissioner should be caught when young and trained a lifetime." This statement goes to the core of the problem. It recognizes the possibility of a regulatory commission composed not of technicians, lawyers, or well-intentioned laymen but a Commission of Commissioners.

The realization is dawning in the United States that we must attempt deliberately to develop a group of able administrators who are competent to perform the heavy duties now being shouldered by the federal government. This is not enough however. We cannot rest content with creating a corps of superior officials. This corps must be the product of representative democracy and not the off-shoot of a ruling oligarchy be it social, economic, or political. If the demands made upon the modern state point to the inescapable necessity of a large administrative class the tenets of representative government require that this great officialdom be not identified with any one segment of the population. It must have a basis as broad as the limits of ability. Our 143 commissioners present a picture that is quite in harmony with the general tenor of American politics. The peculiar demands of commission service make it essential that men of a very high calibre be appointed. These agencies must be guarded from the politician.

Many of the abuses of American public life arise from the fact that professional politicians tend to monopolize public offices. In other words, public employment has too often fallen to those who possess the skills of manipulation and ingratiating that induce political support but who lack the interest or the competence to perform the duties of the office they have succeeded in winning. Politicians, to be sure, are needed. They survive because they fulfill a necessary function. They tend the cumbersome machinery of representative government. They understand human foibles and desires. They reflect the aspirations of the uncritical mass man. They assist vitally in the compromising of conflicting interests. They often reduce the frictions of our economic order. We



have discovered no adequate substitute for these specialists in practical political psychology. We must have men who like Plunkitt of Tammany Hall "study human nature and act accordin'." But the price that such practitioners exact for their services is high. Their levy may, indeed, reduce the value of representative institutions to the dross of empty formalities. They have no place on regulatory commissions. Almost none of our federal commissioners could be classified as "professional politicians" in any invidious sense, though many have been active in political life.

This study has uncovered two major faults in our present system: (1) the average brevity of service and (2) the lack of intimate knowledge of administrative duties on the part of most appointees. It is not that our commissioners have been weak or incompetent men. It is rather that their strength and competence have not always been closely related to their new responsibilities. The worst flaw is that they have not remained in office long enough to develop the necessary expertness or to give the government the full advantage of what competence they possess. If a larger proportion of our commissioners are to give the best years of their lives to the government service, several factors must be considered. Some of these factors are political and hence will probably always be present. Nevertheless, it is highly desirable that the custom of reappointment become better established.

On every commission there should be two or more commissioners who are familiar with all the ramifications of the work of their board. This can best be obtained through a life time spent in the government service. Such knowledge can only be gained over an extended period of service. There are a few such men at the present time. They carry the heaviest burden. In addition to these men there should be other commissioners whose experience has been gained in walks of life outside the government. These men should undertake their governmental duties while they are still young enough to give a decade or more to their administrative work. They would make up in breadth, vigor and freshness of viewpoint what they lacked in intimate knowledge of administrative affairs. As our commissions gain in prestige, they will become more attractive to men of affairs.

The most immediate problem is to build up within our administrative service lines of promotion that will bring to commissions men who have filled minor posts with great success.

In this fashion we can insure the presence on each commission of two or more men who thoroughly understand administrative and technical questions. Such men would provide a needed element of continuity and would further serve as guides and advisors to appointees coming from the outside.<sup>2</sup> In a very true sense they would be professional administrators. It is not impossible to get such men on our commissions and it will not be difficult to get them to stay once they can be made to feel secure in their positions. They might come from state regulatory bodies or they might come from federal administrative posts or other commissions in closely related fields.

There are more than enough instances of this sort to indicate that it is a practical and a desirable arrangement. The demands of the work on regulatory commissions inevitably encourage professionalism. In the case of the I.C.C., for example, the railroads recognize that able commissioners are of the utmost importance. Professor Frankfurter states:

That Mr. Eastman's reappointment as member of the Interstate Commerce Commission should have been strongly urged by the railroads whose views on vital issues he has rejected, also proves that, so far as the public opinion which asserts itself is sufficiently informed regarding the quality of public work, disinterested capacity in government will find support.<sup>3</sup>

In urging that a conscious effort be made to include on all of our commissions men with a solid background of administrative experience one very pertinent consideration must not be overlooked. Is there an adequate supply of such men? Do we know "what gems of purest ray serene the dark unfathomed caves of ocean bear"? In a word have men of outstanding qualifications been developed on our commission staffs and have these men been overlooked by the President in making appointments? A definitive answer cannot be given to this question. No systematic study has been made of the qualifications of all those holding important staff positions. The writer can offer data on the I.C.C. however. The records of all administrators receiving salaries of \$5000.00 or more per annum were examined. Based upon these 165 cases certain generalizations emerge. The vast majority of these men entered the Commission at an early age. Few of them

<sup>2</sup> For interesting comments on the greater objectivity of career administrators see, C. J. Friedrich, *Problems of the American Public Service*, pp. 37-38.

<sup>3</sup> *The Public and Its Government*, Yale University Press, 1930, p. 135.

were college trained. They completed their educations at night school while in the service of the government. By a series of promotions over a period of ten to twenty years they advanced to their \$5000.00 jobs. This record suggests that attainment on the I.C.C. is largely limited to the few hundred men who are willing to undergo the long apprenticeship of clerical service that may ultimately for a few lead to a position of responsibility. This system greatly limits the numbers who might compete for such posts. Such a grind is not likely to appeal to an aggressive, ambitious, and well-trained man. Yet it is such men who would probably develop into the best commissioners. Hence, before one can conclude that more appointments should be made from the ranks of those in the administrative service, some provision must be made for recruiting a vigorous, intelligent and well-trained personnel. To pursue the implications of this problem would go beyond the limits of this research but it is nonetheless important to note in passing. Improvement cannot come at the apex without improvement at the base.

Until the purpose of a commission is defined, its relation to the rest of the administration broadly indicated and its functions agreed upon, the proper qualifications for those serving as commissioners cannot be fixed. To a certain extent a new commission must win a place for itself in the general administrative scheme. It must show that it is competent to carry forward its statutory duties. Unless the President has confidence in the agency he will attempt to limit its discretion and direct its policy. But where a commission succeeds for a considerable period in discharging its administrative duties without internal friction or external interference, it begins to develop the kind of competence upon its staff and among its directing members that is appropriate for the optimum performance of its functions. Thus in pragmatic fashion those qualities best suited to accomplishing the particular tasks of a given commission are discovered. It is in accordance with these discoveries that the proper qualifications for a commissioner can be stated. To fix qualifications in any other terms is to make a *a priori* assumptions based on expectations rather than on experience.

Our review of individual records demonstrates that the best qualified commissioners are serving on those commissions that have succeeded in building up a tradition and in functioning with-

out political interference. Only under such conditions can public servants of the highest calibre be developed. "Good men" in command will win a place for their commission in the government and before the public. On the other hand, as the authority and prestige of an administrative agency grows, service on such a body becomes more attractive to "good men."

If a commission is not to founder, the character of its membership must be appropriate to the nature of its responsibilities. It is submitted that the variegated personnel brought together on some of our federal commissions is due to the fact that there has been much confusion as to the rôle that the commission is to fulfill. This is essentially the moral to be drawn from the difficulties of the Tariff Commission from 1926 to 1930.

The Tariff Commission illustrates the dangers that may overwhelm an independent commission when it is charged with so controversial an issue. Where a commission is charged with administering a problem closely tied up with changing public policy, it is to be expected that politically-minded commissioners will have the greatest influence. This is the story of the Federal Trade Commission.<sup>4</sup> The Securities and Exchange Commission, the Federal Power Commission and the Federal Communications Commission have not yet tested their full potentialities. At present their future seems hopeful. If as a matter of national policy, these agencies are to be given the opportunity to act freely, it is of the utmost importance to find the commissioners who can develop this freedom to best advantage. Their qualifications become a matter of prime importance.

Qualifications for service appear to be determined by the political and economic context of the Commission. The whole problem of qualification is of a relative nature. Qualifications amount to the possession of certain characteristics and equipment for the performance of a particular duty.

If men of ability, judicial temperament and independent judgment are those best qualified to serve on our commissions then these agencies must be treated as independent and quasi-judicial tribunals. The attitude taken toward the commission must be in keeping with the standards set for its members. Qualifications

<sup>4</sup> See the author's recent volume, *Public Administration and the Public Interest*, McGraw-Hill, 1936, for a discussion of political forces and these so-called independent commissions.

that are incompatible with the actual character of the commission will lead to trouble. It may be that the sphere for the independent commission is a limited one. A burning political issue cannot be cooled enough for judicious handling simply by creating an administrative board. On the other hand, when an administrative board is able to establish over a long period of time a reputation for expertness and objectivity, a professional spirit can in time become embodied in the "ideal commissioner." The model is here based directly upon the demands made by the tasks with which the members of a particular board are confounded year after year. An *expertise* suitable for meeting the recurring demands of this particular job is thereby evolved. This has been happening on the Interstate Commerce Commission.

Accordingly, it was possible for one member of this body to answer our question as to the "proper" qualifications for service on the I.C.C. in much more definite terms than those used by commissioners serving on other agencies. This official stated:

The commissioners are not judges, but are administrators given the task of making a law work. A knowledge of the law is extremely desirable, unless it leads the possessor to an unduly legalistic point of view. A profound knowledge of commercial geography is necessary. A good knowledge of business practices, general economic theory (not necessarily formal), the general principles of accountancy and corporate finance, are most desirable. A general knowledge of the manner in which all departments of the public utilities regulate and carry on their business is a requisite. Administration and public business have their own technique, familiarity with which may be gained.<sup>5</sup>

Here we have the outline of a course of training that would be directly useful. The intangible factors of personality continue to be of fundamental importance, but the fact remains that given the right man his effectiveness can be vastly increased along certain predeterminable lines. It follows then that as our administrative commissions approach the status that the Interstate Commerce Commission has gained, it will be possible to set forth with increasing confidence definite qualifications for their members. In this way a commissionership may in time develop into a career to which ambitious and able men may aspire. This cannot be accomplished at one stroke. We must perforce build slowly. As the place of the commission becomes firmly established, so will the conception as to the proper qualifications of its members be clari-

<sup>5</sup> See also the speech of Commissioner Aitchison in the *Proceedings*, 1928, 40th Convention, National Association of Railway Commissioners, p. 27 *et seq.*

fied. This has been the case with the I.C.C. When one of the former members of this body, whom we consulted, referred to Joseph B. Eastman as "the ablest Commissioner I have ever known," he echoed from his own direct experience an estimate that is widely accepted by the public simply upon the general reputation that this outstanding public servant has acquired through years of valuable service. We come much nearer a concrete definition as to proper qualifications for service on the Interstate Commerce Commission when we can take as models those who have proved their value over a long period. In the course of time, opinions crystallize about one commissioner. He stands out from his fellows as a "good man" and preëminently well-suited to carry his responsibilities.

The problem of proper qualifications cannot be answered in abstract terms but must be taken in its relation to the status and responsibilities of each commission. It is evident from reviewing the opinions of commissioners with experience on different bodies that tradition and *esprit de corps* are of tremendous significance and color any discussion as to what constitute proper qualifications. For most of our administrative tribunals this background is lacking and hence there exists no sound basis for framing standards.

With the passage of time, the place of a commission in the federal administration becomes clear, its powers defined and its scope delimited. Then men appear who are eminently successful in carrying on the work of this body. In them are embodied the qualifications suited to serve their commission. These men provide the only reliable guide in fixing qualifications and to them we must turn for guidance. From the characteristics thus presented in concrete form we can distill the "proper qualifications" that are needed on their commission. No hard and fast rules can ever be laid down. No purely objective and scientific norms are possible. But from looking at the successful administrator, we can deduce that certain types of training, of experience, of temperament and of ability have determined the quality of his work. Profiting by this example, men with similar traits of character with comparable training and experience can be chosen and introduced into the service. A proper combination of administrative expertness must be preserved on various boards. Wisdom there must be in the appointing authority under all circumstances, but standards for

guiding the President in making his selections and the Senate in confirming appointments can be discovered. These criteria can be read in our commissioners' past accomplishments and present performances. With their careers as guides we can determine the elements of character, of training and of experience that must be combined in developing their appropriate successors.

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## APPENDIX A

### *Political Party Affiliation of Commissioners*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Total
Democrat	21	9	11	11	5	4	4	3	68
Republican	21	12	13	11	7	4	3	2	73
Independent	1	0	0	1	0	0	0	0	2
Total	43	21	24	23	12	8	7	5	143*

\* The 143 commissioners considered in this study include four men who are treated twice, James M. Landis and George C. Mathews of the Securities and Exchange Commission, who formerly served on the Federal Trade Commission, and Thad Brown and Eugene O. Sykes who were retained as members of the Federal Communications Commission following the discontinuance of the Federal Radio Commission.

## APPENDIX B

### *Geographical Distribution of Commissioners*

If the states are classified into the geographical regions devised by the Bureau of the Census, the table of sectional distribution for the personnel of the commissions is as follows:

TABLES OF TOTALS FOR DISTRICTS

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
New England	5	1	3	4	0	1	1	2	17
Mid Atlantic	8	4	2	4	3	0	2	2	25
E. No. Central	8	6	4	1	1	0	1	1	22
W. No. Central	5	5	6	2	4	0	0	0	22
So. Atlantic	5	1	3	8	1	3	0	0	21
E. So. Central	4	2	1	1	1	0	1	0	10
W. So. Central	2	0	1	0	0	1	2	0	6
Mountain	2	1	2	2	1	1	0	0	9
Pacific	4	1	2	1	1	2	0	0	11
Totals	43	21	24	23	12	8	7	5	143
Deep South	3	1	1	4	1	2	1	0	13

(1) NEW ENGLAND

Maine  
New Hampshire  
Vermont  
Massachusetts  
Rhode Island  
Connecticut

(2) MIDDLE ATLANTIC

New York  
New Jersey  
Pennsylvania

(3) EAST NORTH CENTRAL

Ohio  
Illinois  
Indiana  
Michigan  
Wisconsin

(4) WEST NORTH CENTRAL

Minnesota  
Missouri  
South Dakota  
Kansas  
Iowa  
North Dakota  
Nebraska

(5) SOUTH ATLANTIC

Delaware  
District of Columbia  
West Virginia  
South Carolina  
Florida  
Maryland  
Virginia  
North Carolina  
Georgia

(6) EAST SOUTH CENTRAL

Kentucky  
Alabama  
Tennessee  
Mississippi

(7) WEST SOUTH CENTRAL

Arkansas  
Oklahoma  
Louisiana  
Texas

(8) MOUNTAIN

Montana  
Wyoming  
New Mexico  
Utah  
Idaho  
Colorado  
Arizona  
Nevada

(9) PACIFIC

Washington  
Oregon  
California

(10) DEEP SOUTH

South Carolina  
Florida  
Mississippi  
Louisiana  
Georgia  
Alabama  
Arkansas

## FEDERAL COMMISSIONERS

States	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Alabama	2	1	0	0	0	0	0	0	3
Arkansas	0	0	1	0	0	0	0	0	1
California	2	1	0	1	1	1	0	0	6
Colorado	1	0	1	1	0	0	0	0	3
Connecticut	0	0	0	1	0	0	0	0	1
Florida	0	0	0	1	0	1	0	0	2
Georgia	1	1	1	1	0	0	0	0	4
Idaho	1	0	1	0	0	0	0	0	2
Illinois	4	2	1	0	0	0	0	0	7
Indiana	1	0	1	1	0	0	0	0	3
Iowa	4	1	2	0	1	0	0	0	8
Kansas	0	0	2	1	1	0	0	0	4
Kentucky	1	0	0	0	0	0	0	0	1
Louisiana	0	0	0	0	0	1	0	0	1
Maine	0	0	0	0	0	1	0	0	1
Maryland	0	0	0	3	0	0	0	0	3
Massachusetts	2	1	1	3	0	0	0	1	8
Michigan	1	1	0	0	0	0	0	0	2
Minnesota	0	2	2	0	1	0	0	0	5
Mississippi	0	0	0	1	1	0	1	0	3
Missouri	1	0	0	0	0	0	0	0	1
Nebraska	0	2	0	0	1	0	0	0	3
New Hampshire	0	0	2	0	0	0	0	0	2
New Jersey	3	0	2	0	0	0	0	0	5
New York	4	4	0	2	2	0	2	2	16
North Carolina	0	0	1	0	0	1	0	0	2
North Dakota	0	0	0	1	0	0	0	0	1
Ohio	0	2	0	0	1	0	1	0	4
Oklahoma	1	0	0	0	0	0	1	0	2
Oregon	1	0	0	0	0	0	0	0	1
Pennsylvania	1	0	0	2	1	0	0	0	4
Rhode Island	0	0	0	0	0	0	1	0	1
South Carolina	0	0	0	1	0	0	0	0	1
Tennessee	1	1	1	0	0	0	0	0	3
Texas	1	0	0	0	0	0	1	0	2
Utah	0	1	0	1	1	0	0	0	3
Vermont	3	0	0	0	0	0	0	1	4
Virginia	1	0	1	2	0	0	0	0	4
Washington	1	0	2	0	0	1	0	0	4
West Virginia	0	0	0	0	1	0	0	0	1
Wisconsin	2	1	2	0	0	0	0	1	6
Wyoming	0	0	0	0	0	1	0	0	1
D.C.	3	0	0	0	0	1	0	0	4
Total	43	21	24	23	12	8	7	5	143

For a chart on the sectional distribution of business men as compared with the persons listed in the 1927-1928 *Who's Who*, see F. W. Taussig and C. S. Joslyn's *American Business Leaders*, p. 46.

## APPENDIX C

*Table of Educational Backgrounds*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Grammar School	43	19	24	22	12	8	7	5	140
High School	35	19	22	20	11	7	7	5	126
Private Tutor	0	0	0	1	0	0	0	0	1
Unknown	2	0	0	0	0	0	0	0	2
Private Academy	6	0	2	2	0	1	0	0	11
Seminary	2	0	1	0	0	0	0	0	3
Normal School	2	0	0	0	2	0	0	0	4
Unknown	2	1	0	0	0	0	0	0	3
College Experience	6	5	7	1	0	1	2	1	23
B.A. or B.S.	21	10	8	16	4	3	5	3	70
Graduate Study;									
No degree	1	0	1	1	0	1	0	1	5
M.A. or M.S.	6	4	0	7	1	1	1	1	21
Ph.D.	3	0	0	6	1	1	1	0	12
Private Law Study	10	1	5	5	0	2	0	1	24
Law School Experience	4	2	4	2	0	0	2	0	14
LL.B.	13	3	7	3	3	1	5	2	37
J.D.	0	0	0	0	0	0	0	1	1
Naval Academy									
Experience	0	0	1	0	0	0	1	0	2
Naval Academy	0	0	0	0	1	0	0	0	1
Military Academy	0	0	0	0	1	0	0	0	1
E.E. or C.E.	1	0	0	0	2	1	0	0	4
D.E.	0	0	0	0	1	0	0	0	1
Foreign Education	1	1	0	0	0	1	0	0	3
Foreign Study	3	5	0	4	0	0	0	0	12

### *Schools*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
State or City University	9	5	3	4	1	0	3	1	26
State College	0	0	1	1	2	0	0	0	4
Private and Endowed									
Colleges, Univer.	22	11	13	13	3	0	4	2	68
State or City Law School	6	1	3	1	1	1	4	1	18
Private Law	11	2	8	4	1	1	2	2	31
Normal School	2	0	0	0	2	0	0	0	4
Military and Naval									
Academy	0	0	1	0	2	0	1	0	4
Foreign University	4	5	0	4	0	0	0	0	13

## APPENDIX D

*Clubs:* One way to gain some general impression of the characteristics of these commissioners as a social group is to note their club and fraternal affiliations.

Our commissioners are not great "joiners." Only 7 Rotarians were found and 2 members of Kiwanis. Two American Legionnaires were encountered. Thirty-five are Masons and 31 members of Greek letter social fraternities, but there were only 2 Oddfellows, 2 Moose, 14 Elks, 12 Shriners, 9 Knights of Pythias and 4 Woodmen of the World. Two or three commissioners who each belong to six or seven organizations account for a heavy percentage of these figures. The inclinations of most of our commissioners lie in different realms. Membership in a scientific or learned society is much more common. Only 2 are members of trade unions. Forty hold membership in a bar association. Fourteen have the privilege of dangling a Phi Beta Kappa key on their watch chains. At least half of the commissioners, and probably more, belong to clubs—golf clubs, university clubs, city clubs, athletic clubs, etc. The difficulties of gathering complete data on the social affiliations of all these men outweighed the relative importance of the information and in 27 instances the data could not be obtained. Nevertheless, the material we have suggests something of the general social and cultural complexion of this group.

## APPENDIX E

*Religious Affiliation:* In only 79 out of the 143 cases was it possible to secure data as to religious affiliation. The search was not extended because the point is of relative unimportance to the study and the matter is too personal to justify persistent inquiry. One commissioner in fact questioned the propriety of discussing the subject at all. No effort was made to distinguish between the active adherents of a church and the nominal members. According to our figures the Presbyterians rank first with 23, the Episcopalians next with 17, the Baptists 9, Methodists and Catholics 6 each, Mormons and Congregationalists 3 each and Christians 2. One Jew was reported though several Jewish names appear. If these figures are to be accorded any significance it probably lies in a comparison with the relative numerical strength of various churches in this country.

### *Church Membership*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Baptist	2	1	2	2	0	1	1	0	9
Campbellite	1	0	0	0	0	0	0	0	1
Catholic	2	0	1	0	1	0	0	2	6
Christian	0	0	1	0	1	0	0	0	2
Christian Scientist	0	0	1	0	0	0	0	0	1
Congregationalist	1	1	1	0	0	0	0	0	3
Dutch Reformed	0	1	0	0	0	0	0	0	1
Episcopalian	4	3	2	3	1	2	1	1	17
Jewish	0	1	0	0	0	0	0	0	1
Lutheran	1	0	0	0	0	0	0	0	1
Methodist	0	1	1	2	2	0	0	0	6
Mormon	0	1	0	1	1	0	0	0	3
Presbyterian	7	2	4	6	1	1	1	1	23
Unitarian	1	0	0	0	0	0	0	0	1
Universalist	0	0	0	1	0	0	0	0	1
Non-sectarian	3	0	0	0	0	1	0	0	4
None	1	0	0	0	0	0	0	0	1
Unknown	20	10	11	8	5	3	4	1	62
Totals	43	21	24	23	12	8	7	5	143

## APPENDIX F

### *Publications*

Literary production is sufficiently common to give a faint scholarly tinge to our commissioners as a group. Thirty of the 143 officials have published one or more books and most of these directly relate to the same general subject-matter with which the author had to deal as a commissioner. The writings of T. W. Page and F. W. Taussig on tariff problems come to mind immediately. On the I.C.C. at least 6 of the 9 author-commissioners dealt with legal or transportation questions in works that were published before they undertook their official duties in the federal government. T. M. Cooley had completed several scholarly tomes on constitutional law; W. M. Daniels had written political history and a text on public finance; W. M. W. Splawn had published volumes on railway consolidation and on government ownership and operation; and B. H. Meyer had written on railway legislation in the United States. Clearly, published works in these cases suggested the man's qualifications. The newspaper writing of T. F. Woodlock in the *Wall Street Journal* not only showed his competence to discuss transportation problems, but also gave clearly his attitude toward the railroads and thereby aroused much criticism from certain Senators.

N. B. Gaskill has written on price control and on price discrimination, J. F. Fort published a book on the labor laws of New Jersey and G. C. Mathews, prior to service on the Federal Trade Commission, was co-author of "The Uniform Classification of Accounts for Electric and Gas Utilities." The published works of Landis on commercial law directly qualified him for his responsibilities in regulating business. Basil Manly before his appointment to the Federal Power Commission had built a reputation with his social and economic studies of industry and the farmer. W. S. Culbertson is the author of "International Economic Policies."

Seldom have commissioners found time under the pressure of their official duties for the preparation of books. A notable exception is B. H. Meyer's "History of Transportation in the United States," published during his seventh year of office, and C. B. Aitchison, while serving, published in 1930 the I.C.C. Acts Annotated. The wealth of experience

and wisdom gained in the government service rarely finds its way into books penned by those who have served on the commissions. Three important studies based upon such direct contact published by our commissioners are: P. W. Warburg's "The Federal Reserve System," W. P. G. Harding's "The Formative Period of the Federal Reserve System," and T. W. Page's "Making the Tariff in the United States."

In general, the publications of these federal officials can only be taken as evidence corroborative of their competence to deal with their responsibilities as commissioners. Although scholarship might be considered a qualification of considerable importance, the writings of these men cannot be interpreted as of more than incidental significance in their choice as members of our regulatory commissions.



## APPENDIX G

### *Occupational Background*

#### *Employment at Time of Appointment*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Law	19	1	5	3	4	2	2	0	36
Public Service	17	5	14	12	4	5	4	4	65
Fed. Res. Officials	0	4	0	0	0	0	0	0	4
Business	2	1	2	3	3	0	0	1	12
Banking	0	7	0	0	0	0	0	0	7
Education	2	0	0	2	0	0	0	0	4
Agriculture	0	2	1	1	0	0	0	0	4
Railroad Service	1	1	0	0	0	0	0	0	2
Journalism	1	0	2	1	1	0	1	0	6
Trade Unionism	1	0	0	1	0	0	0	0	2
Engineering	0	0	0	0	0	1	0	0	1
Totals	43	21	24	23	12	8	7	5	143

#### *Primary Occupations*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Law	18	2	7	4	3	2	1	1	38
Public Service	13	2	11	9	4	4	4	2	49
Business	2	1	2	2	3	0	0	1	11
Banking	0	11	0	0	0	0	0	0	11
Education	4	2	1	4	1	0	1	1	14
Agriculture	0	2	1	1	0	0	0	0	4
Railroad Service	2	1	0	0	0	0	0	0	3
Journalism	2	0	2	2	1	1	1	0	9
Trade Unionism	1	0	0	1	0	0	0	0	2
Engineering	1	0	0	0	0	1	0	0	2
Totals	43	21	24	23	12	8	7	5	143

The general pattern of occupational interest has been indicated already.<sup>1</sup> The details relating to members of various commissions illustrate their variety of interests.

What kind of business experience do we find in the case of Interstate Commerce Commissioners? Carroll Miller, who for five years prior to his appointment in 1933 was president and director of a large corpora-

<sup>1</sup> F. X. Welsh in a study of the previous occupations of state public utility commissioners found that of a total of 164, 79 were lawyers, 13 engineers, 5 journalists, 29 business men and bankers, 17 farmers, 12 industrial workmen and 9 governmental employees. *Public Utilities Fortnightly*, 1929, pp. 801-807.

tion, was, by profession, an engineer and a graduate of the Stevens Institute of Technology. He spent most of his time as a consulting engineer and closely concerned in the technical processes in various important public utilities.

Miller comes closer to being a big business man than any of the others who have served. T. F. Woodlock was a member of the New York Stock Exchange from 1905-1918 and for five years an officer of the American International Corporation, but he was a professional journalist and a writer on financial and railroad problems. Although a director on two railroads at the time of his appointment, he was giving most of his time to writing, and when he resigned after five years on the commission, he returned to writing on financial subjects. James D. Yeomans was engaged in railroad construction and superintendence for some time and R. V. Taylor was connected with the Mobile and Ohio Railroad for about 40 years. F. I. Cox was in the silk business and an official in a traveling salesmen's association. But Cox and Yeomans were also attorneys, and Taylor was busy as Mayor of Mobile for the five years preceding his appointment to the commission.

*U. S. Tariff Commission.* The primary occupational interests of our Tariff Commissioners are more evenly distributed. Thus 4 were lawyers, 5 teachers, 2 journalists, 2 business men, and 8 or 9 public officials. Sherman Lowell was a farmer and Master of the National Grange; Ira M. Ornburn, prior to his appointment, was president of the Cigar Makers' International Union, an organization with which he had long been affiliated. Ornburn and Clark of the I.C.C. are the only union officials ever to become commissioners. The former had always been active politically and was, at one time, treasurer of the Wage Earners' Protective Conference. This was an A. F. of L. protective tariff organization headed by Mathew Woll. Ornburn was appointed by President Hoover to fill an unexpired vacancy, and after 18 months service, his term came to a close in June, 1933. When he was not reappointed, the A. F. of L. protested. "The reason," he writes, "that I was not reappointed as a member of the Tariff Commission was political opposition within the Democratic Party in the State of Connecticut." His original appointment had been challenged by a few Senators who questioned his technical qualifications for service on the Tariff Commission. When questioned on this point, he stated: "It is true that I never had the opportunity to receive a college education, but I felt then, as now, that I was sufficiently well informed on questions of tariff to sit as a member of the United States Tariff Commission." (Personal Letter.)

As a matter of fact, about 16 of the 23 men who have served on this commission have been versed in tariff matters by long study and direct contact with such problems. Ornburn and Lowell must be regarded as representatives of economic groups rather than as experts.

F. W. Taussig, Professor of Economics at Harvard University, was invited by President Wilson to organize the commission and start it on its way. As one of the outstanding economists of the country and an acknowledged authority on the tariff, his qualifications were unquestioned. He was the first of the five men of academic background to serve on the commission.

Alfred P. Dennis received his A.B. and Ph.D. at Princeton, taught history and politics at Wesleyan and Smith College, and wrote many articles on trade and industry. He engaged in business and travelled abroad as a commercial attaché. He was one of "Hoover's men" in the Department of Commerce. He was a journalist, a farmer, a professor, an official, a business man and a trained economist.

Thomas W. Page attended the University of Virginia, received his Ph.D. at the University of Leipzig, and studied at Oxford and the University of Paris. He was dean of the College of Commerce at the University of California and head of the Department of Economics at the University of Texas. He was a professor of economics at the University of Virginia and California. He served on President Taft's Tariff Board and on several boards during the war. He undertook his long service on the U. S. Tariff Commission in 1918.

Besides these commissioners of distinguished academic antecedents, there are two others, both highly trained agricultural economists, E. B. Brossard and J. L. Coulter. The former graduated from the Utah Agricultural College, received his Ph.D. at the University of Minnesota and taught at his alma mater. He served as an agricultural economist on the staff before his appointment to a commissionership in 1925. The career of Coulter is very similar. An A.B. from the University of North Dakota, a Ph.D. from Wisconsin, he was later an instructor in three western state universities and did special work in the Census Bureau. Coulter became a professor of rural economy, dean of the West Virginia Agricultural College and director of the Experiment Station. In 1921 he was made president of the North Dakota Agricultural and Mining College and in 1929 Chief Economist and chairman of the Board of Advisors on the Tariff Commission. He served as commissioner until June, 1934. No other commission has had so high a proportion of its members recruited from the ranks of the professors.

immediate concern to business men than the fixing of tariff schedules, only 2 commissioners were primarily engaged in industry. Three others had contacts of a limited sort. The two who were primarily business men also found time for government service. William Kent, after dealing for twenty years in real estate and livestock, became a Congressman from California. William Burgess found time to act as an investigator for the Treasury Department concerning trade conditions abroad, although he was chiefly engaged in the pottery business.

One of the two journalists, T. O. Marvin, was literary editor of the *Boston Journal* and later chief editor of the *Protectionist*, a paper devoted to the tariff. Marvin started life as a minister of the Universalist Church but spent most of his career preaching the doctrine of a high protective tariff. From 1911 to 1912 he was secretary of the Boston Home Market Club. R. L. O'Brien was for more than 32 years connected with Boston newspapers. He began his career as personal secretary to President Cleveland and then continued on in Washington as correspondent for the *Boston Transcript*. He was editor of this paper from 1906-1910 and of the *Boston Herald* from 1910-1928.

Of the 9 commissioners who had legal training about half gave most of their time to the practice of their profession before coming to the commission. All of the lawyers served the government and it is impossible to create two clearly separate categories of attorneys and public servants. With possibly 2 or 3 exceptions, all of those who have served on this commission have been connected with governmental affairs either as politicians, lobbyists, or as subordinate officials.

*Federal Reserve Board.* Of the 21 members of this Board, past and present, 12 were bankers before their appointment.

Paul M. Warburg was once a member of Kuhn, Loeb and Company, chairman on the Board of the International Acceptance Bank and a director on the Baltimore and Ohio Railroad, the Union Pacific Railroad, the Western Union Telegraph Company, and four other large corporations. He was educated in Germany, and was interested in music and musicians.

Albert Strauss started his banking career in New York in 1882, and in 1901 became a member of J. and W. Seligman and Company. This contact was interrupted only by his 17 months of service on the Federal Reserve Board. Strauss was a director in a number of great corporations, including the Cuban Cane Sugar Corporation, the Brooklyn Manhattan Transportation Corporation and the Pierce-Arrow Motor Car Company. He held membership in about 15 exclusive clubs.

Eugene Meyer graduated from Yale and studied banking abroad. He

headed his own banking house for about 17 years and also acted as director in many corporations. He relinquished all his private undertakings in 1917 for public service. He was an advisor on the Council of National Defense and the War Industries Board and director of the War Finance Corporation. He served on the Federal Farm Loan Board and came to the Federal Reserve Board in 1930.

These three men are the only "big New York bankers" to serve on the Board. Let us next consider the three influential bankers from the South.

Eugene Black was educated at the University of Georgia and later studied law. He engaged in banking and became president of the Atlanta Trust Company and a governor of the Federal Reserve Bank at Atlanta before joining the Federal Reserve Board. He served with the understanding that he could resign after a short period. President F. D. Roosevelt appointed him in May 1933 to assist in the administration of the new banking legislation.

W. P. G. Harding graduated from the University of Alabama at 16, took his M.A. the next year and then started work as a bank clerk and bookkeeper. At 38, he was president of the First National Bank of Birmingham. Twelve years later, he became a member of the Federal Reserve Board. During the war, he served as managing director of the War Finance Corporation.

G. R. James attended the public schools in Memphis, Tennessee and then went into the wagon business. He became president of a bank and of a dry goods company. Work on the War Industries Board and the Industrial Board in the Department of Commerce likewise preceded his appointment to the Reserve Board in 1923.

The other six bankers came from the West: R. A. Young and J. R. Mitchell from Minnesota; D. C. Willis and D. R. Crissinger from Ohio; H. A. Moehlenpah from Wisconsin and M. S. Eccles from Utah. Moehlenpah and Crissinger were both active in politics. The latter was a friend of President Harding, who appointed him Comptroller of the Currency in 1921 and a member of the Federal Reserve Board in 1923. Moehlenpah was several times the Democratic party nominee for office in Wisconsin and he ran for Governor just before coming to the Board in 1918.

D. C. Wills was chairman of the Federal Reserve Board of the Reserve Bank in Cleveland for 6 years before appointment to the national board and R. A. Young was governor of the Federal Reserve Board of Minneapolis for 8 years prior to becoming a member of the Federal

J. R. Mitchell and M. S. Eccles were prominent bankers in their states before joining the federal administration. The former was a Yale graduate and the latter attended Brigham Young College. A Mormon, he was also identified with many important industrial activities in Utah.

In three instances agricultural experience was the chief qualification. W. W. Magee of Nebraska, while primarily concerned with farming, had acquired some contact with banking as a member of the advisory board of the Omaha branch of the Federal Reserve Bank of Kansas City. When appointed to the Federal Reserve Board, he was a director on the Federal Bank of Kansas City. E. H. Cunningham had served as Speaker of the Iowa House of Representatives and was secretary of the Iowa Farm Bureau Federation when called to the Reserve Board. M. D. Campbell throughout his career was actively interested in farmers' cooperative organizations, and, at the time of his appointment, was president of the National Milk Producers' Association.

Two of the Board, C. S. Hamlin and J. J. Thomas, were lawyers, although Banker Black and Farmer Magee also had a legal background. Hamlin, a Harvard A.B. 1883 and LL.B. 1886, practiced law in Boston for many years. During this time, he ran for State office and twice served as Assistant Secretary of the Treasury—1893-97 and then 1913-14. He went directly from the Treasury to the Federal Reserve Board. He had led the Woodrow Wilson League of Massachusetts and he was one of the original Wilson appointees to the Federal Reserve Board. Thomas was active in Nebraska politics, although unsuccessful in his attempt to reach the U. S. Senate as the Democratic nominee in 1924. He later served as chairman of the Democratic State Central Committee and was appointed by F. D. Roosevelt in June 1933 to the Federal Reserve Board.

A. C. Miller and M. S. Szymczak fall into the category of professors and students of finance and economics. The former had an extensive academic career teaching at Harvard, Cornell and Chicago. He was a professor of Economics at the University of California from 1902 to 1913. He then became assistant to the Secretary of the Interior and a year later was appointed by President Wilson to the Federal Reserve Board. Szymczak, an A.B. and A.M. from DePauw University and a close political associate of former Mayor Cermak of Chicago, was placed upon the Board by President F. D. Roosevelt in June 1933.

The last two cases for consideration are difficult to classify. Edmund Platt was a Harvard A.B., a law student, a teacher of History and English, an editor and publisher, and from 1913 to 1920, a Congressman from New York. He served as chairman of the Committee on Bank-

ing and Currency and resigned in order to join the Federal Reserve Board. F. A. Delano, a Harvard A.B., 1885, started in as an apprentice machinist on the Central Illinois and Lackawanna Railway and was president of the road by 1914. He then served for 4 years as a member of the Federal Reserve Board and has been active in the public service ever since.

*Radio Commission.* The principal occupations of those who were named to the Federal Radio Commission were the law in the case of 3, the public service 4, business 3, and one each from journalism and teaching. While these commissioners cannot be grouped according to particular occupations, their general background suggests three categories. One group had direct experience in broadcasting or the radio industry.

H. A. Bellows was a Harvard Ph.D. and a teacher of Rhetoric at the University of Wisconsin. He became the managing editor of two papers between 1912 and 1925. Immediately before his appointment to the Radio Commission in 1927, he was the manager of the Gold Medal Radio Corporation.

W. D. L. Starbuck was both lawyer and engineer, and he capitalized this training by building radio sets and experimenting with radio in its early days.

O. H. Caldwell was graduated from Purdue as an electrical engineer and continued his training in Germany. He was for years associate editor of *Electrical World*, an important electrical engineering journal, and later editor of *Electrical Merchandising and Radio Retailing*.

Sam Pickard organized the first "college of the air" at the Kansas Agricultural College and continued similar work for the farmers as an official in the Department of Agriculture before joining the commission.

Thad H. Brown was educated at Ohio Wesleyan, and Ohio State University. He was a practicing lawyer and served as a Civil Service Commissioner and Secretary of State in Ohio. He was president of the Cleveland Broadcasting Corporation before becoming chief counsel on the Power Commission, later general counsel on the Radio Commission and then a commissioner.

H. A. LaFount was an important figure in the religious, civic and business life of Utah. He was made a Bishop in the Mormon Church. He engaged in the construction of canals, townsites, roads and bought large holdings of real estate. He managed several large companies, and at the time of his appointment, was active head of the Great Western Radio Corporation.

This group of men made the Radio Commission notable for the direct connection and wide experience that many of its commissioners had had in the industry they were called upon to regulate.

The commission was distinctive in another respect. Three of its members were professional men of war. Charles Saltzman was educated at the U. S. Military Academy, the Army Signal School, and the Army War College and he spent 27 years in the Signal Corps and the Communications Service. He was a retired Major General when he joined the commission. Lieutenant Colonel J. F. Dillon, after about 30 years of service in the U. S. Army, became one of the first Federal Radio Inspectors in the Bureau of Investigation. He is referred to as one of the very first pioneers in the radio field.

Rear Admiral Bullard saw active service in the Spanish-American War and the World War and he organized the Department of Electrical Engineering at the U. S. Naval Academy. He was superintendent of the U. S. Naval Radio Service. "Admiral Bullard has been rightly called the Father of American Radio," a press release states. From this same source we learn: "Admiral Bullard is a picturesque character, and his career reads like a romance, written around radio. He is stockily built, clean shaven, with a well-modulated voice. While usually stern and serious, the Admiral is intensely human and extremely democratic and resents the title, 'Czar of the Air.' While a very positive character, with pronounced views, the Admiral always listens patiently to petitions of broadcasters, hoping to gain valuable information." It is rare that the government press agents undertake a character sketch of their superiors.

The 9 careers considered above all show a direct knowledge of one or more aspects of radio. The technical qualifications of these commissioners were good. They brought to their official duties experience in either the engineering, broadcasting or manufacturing phases of radio communication. This kind of expertness is lacking in the others who served.

J. H. Hanley was born on a Nebraska homestead, was educated in the Fremont Normal College and taught school for 4 years. He graduated from the Creighton College of Law, and built up some political connections serving as secretary to a Congressman and clerk to congressional committees. He was appointed to be the first national Prohibition Director of Nebraska. He was active in politics but failed as a candidate for Congress. He was an assistant sergeant-at-arms at the Houston and Chicago Conventions. He was one of the original Roosevelt men in his State and served as vice-chairman of the Democratic State Committee.



He was appointed by President Roosevelt to fill an unexpired vacancy and served 15 months on the Federal Radio Commission. When this body was abolished, Hanley opened a law office in Washington. No comments seem necessary on the short and simple annals of this appointee. But this cannot be taken as a typical case.

I. E. Robinson and E. O. Sykes before joining the Radio Commission spent many years in the practice of law and also served on the bench. The former was elected to the Supreme Court of Appeals of West Virginia and the latter was Justice on the Mississippi Supreme Court from 1916 until his resignation in 1925.

From the viewpoint of training and experience, a better case could be made for the qualifications of those serving on the Federal Radio Commission than for several of the other administrative boards studied. But any study of the history of this commission will show that its administrative difficulties could not be disposed of simply by placing "good men" on the commission.

*Federal Communications Commission.* When the Radio Commission was abolished in 1934, Sykes and Brown were placed upon the new Communications Commission. All members of the board were without engineering training and all were lawyers with the exception of G. H. Payne, who was a journalist. He had been an editor, a music and dramatic critic, a political writer, and a lecturer on History at Cooper Union. He was once a tax commissioner in New York City and a former president of the Bronx National Bank. He wrote a number of books: "England, Her Treatment of America," "A History of Journalism in America," "The Birth of a New Party" (a study of the Progressive movement), and a "History of the Child in Human Progress." He managed the political campaigns of others, but failed to win his own elections. He was a candidate for the New York Assembly in 1908 and a contestant in the Republican Senatorial primaries of New York in 1920.

The other four commissioners had combined their legal training with public service. P. A. Walker served the State of Oklahoma as a public utilities commissioner, and N. S. Case was a former Governor of Rhode Island. Hampson Gary had 20 years of diplomatic service behind him and Irwin Stewart came direct from the State Department where he handled communications problems.

*Federal Trade Commission.* Journalism was the profession of W. B. Colver and Victor Murdock, J. M. Landis was a professor of law at Harvard University and G. C. Mathews was a professor of public utilities

at Northwestern University. But Murdock spent 12 years in Congress and Mathews was long associated with public utility regulation. In fact, public service was the occupational background most commonly shared. Only 3 exceptions appear out of a total of 24 commissioners. For 11, this was their primary occupation; 14 were engaged in governmental service at the time of their appointment. In about half of these instances, a connection between this prior service and the work later on the commission can be traced.

*Federal Power Commission.* In the occupational background of every one to serve as a Federal Power Commissioner, prior public service is found. Of these 8 men, 2 were lawyers, and one was an engineer and the remaining 5 were primarily concerned with governmental work.

## APPENDIX H

### *Prior Public Service in States*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
*Governors	1	0	1	0	0	0	1	0	3
State Attorneys	3	2	6	2	1	1	0	0	15
Public Utility Commissioners	11	1	0	0	0	3	2	1	18
Legal Counsel	1	0	0	0	0	1	1	0	3
Experts	0	0	0	1	0	2	0	1	4
Senators	6	0	0	1	0	1	0	0	8
Assemblymen	3	2	3	3	0	2	0	0	13
State or County Judges	5	1	4	0	1	0	1	1	13
Miscellaneous	10	1	5	7	0	1	5	2	31

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#### *\* Governors*

J. W. Fifer, after a long career in Illinois politics, became Governor in 1889. In 1896 he was a prominent candidate for Vice-President of the United States in the Republic National Convention. Three years later he was appointed by McKinley to fill an unexpired vacancy on the I.C.C.

Norman Case started his political career as a member of the Providence City Council, served as U. S. District Attorney 1921-26 and became Lieutenant-Governor in 1927. He was elected Governor in 1928, re-elected two years later, but was defeated in the 1932 election. In 1934 he was appointed by President F. D. Roosevelt to the Communications Commission.

John Franklin Fort served for many years in the New Jersey judiciary, as Judge of the District Court of Newark, as Judge of the Court of Common Pleas of Essex County, and from 1900 to 1907 as Judge of the Supreme Court of New Jersey. He was later invited by President Wilson to go as a special commissioner to the Dominican Republic and to Haiti in order to revise their administrative machinery. "At the like urgent request of President Wilson, and very reluctantly," his son writes, "he accepted appointment to the Federal Trade Commission in March 1917, solely as a public service for the period of the then obviously impending war. He was made Chairman of the Commission in 1917, or early in 1918, and served on it until he had been incapacitated

by illness for some two or three months in 1919, when he resigned. His illness was a nervous breakdown, which was entirely due to a combination of the tropical fever which he had caught in his Santo Domingo work and the excessive strain of working, as he did, day and night, seven days a week, at sixty-five years of age in the Federal Trade Commission." (Personal letter, 10/8/34.)

## APPENDIX I

### *Prior Public Service in Federal Government*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Commissions	1	3	1	0	0	0	2	2	9
Federal Res. Officials	0	4	0	0	0	0	0	0	4
Emergency & War Boards	2	4	3	2	0	1	0	0	12
Legal Counsel	5	0	1	2	1	0	3	3	15
Attorney-Gen. Office	3	1	3	2	0	0	1	0	10
Experts	4	0	1	6	1	1	1	0	14
Diplomatic Service	1	1	1	1	0	0	1	0	5
Commercial Attaché	0	0	1	5	0	0	0	0	6
Court Officers	1	1	0	0	0	0	1	0	3
Naval & Military	0	0	0	0	3	0	0	0	3
Miscellaneous	5	1	3	7	3	2	1	0	22
Totals	22	15	14	25	8	4	10	5	103

## APPENDIX J

### *Term of Appointments*

It is misleading to take the sum total of the years spent in office by all the commissioners and strike an average. Such figures would mean little. The extremes run from Clement's 303 months on the Interstate Commerce Commission to Campbell's one half month as a member of the Federal Reserve Board. There is, moreover, no common basis for comparison. A man may be called to serve for the few remaining months of an unexpired term suddenly left vacant, or an appointee may be given a full term. But a full term may be for two years or ten years or some period in between. Due to the practice of staggering original appointments, often in a 2-4-6-8 year arrangement, a full term appointment connotes varying periods of time. Although averages for full terms and unexpired vacancies convey little meaning, a quantitative analysis of the various kinds of appointments is revealing. This is presented in the following table:

#### *Term Appointments*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Full term	38	13	17	16	10	7	7	5	113
2nd Full term	16	2	2	5	4	2	0	0	31
3rd Full term	5	2	0	1	1	0	0	0	9
4th Full term	3	0	0	0	0	0	0	0	3
5th Full term	1	0	0	0	0	0	0	0	1
Unexpired vacancy	23	9	13	15	5	1	0	0	66
Not reappointed at at vacancy	11	4	7	8	1	1	0	0	32

Due to the different ages of the various commissions a comparison of one agency with another is unfair. An accurate comparison cannot be made by considering the tenure of several commissions during the past decade, since the terms all begin at different times. Nevertheless, these figures do eloquently suggest the great frequency with which the statutory span of office is interrupted. It is important to note that in 23 instances 38 of the full term I.C.C. appointments were cut short and some one else had to be appointed to fill the unexpired term. The checkered career of the Federal Trade Commission and of the U. S. Tariff Commission is clearly reflected in the very high proportion of appointments made to complete unexpired terms.

Our Table does not truly reflect the situation on the Federal Radio Commission or even on the Tariff Commission. All the appointments were terminated when this latter body was reorganized in 1930 and three of the original members were then appointed again for full terms. The record of the Radio Commission verges on the fantastic. The 5 original appointees in 1927 were given terms of 6, 5, 4, 3, 2 years respectively. By the Davis Amendment, Congress later reduced all these terms to a 2 year period, and hence with appointments to expire February 23, 1929. Then, according to this amendment, the commissioners were to be selected again on a 6, 5, 4, 3, 2 scale. The Davis Amendment was approved March 28, 1928. But before the year elapsed another amendment cut all of the appointments to 1 year, after which the terms were to start over again on the usual 6, 5, 4, 3, 2 scale. This measure was approved March 4, 1929 to take effect on the following February. It is evident that the words of the statute relating to tenure can mean little when Congress is uncertain whether a commission shall live or die.

## APPENDIX K

### *Chart of Actual Tenure in Office*

The records relating to tenure are not always accurate or complete. The following tables were pieced together from data secured from the Appointment Clerk in the Department of State, the Executive Clerk in the office of the Secretary of the Senate and the Secretaries of the commissions themselves. The tenure of office is carried down to January 1, 1935 and the names of those serving at that time are starred.

#### *Interstate Commerce Commission*

Name of Commissioner in order of service	Date of Appointment	Months of Service	Age at time of Appointment
Clements, J. C.	March 17, 1892	303	46
*Meyer, B. H.	Dec. 31, 1910	288	46
Knapp, M. A.	March 2, 1891	237	48
*Aitchison, C. B.	Oct. 5, 1917	207	37
Prouty, C. A.	Dec. 21, 1896	207	43
*Eastman, J. B.	Feb. 17, 1919	191	37
Clark, E. E.	July 31, 1906	181	50
McChord, C. C.	Dec. 31, 1910	180	51
Hall, H. C.	March 21, 1914	165	54
Harlan, J. S.	Aug. 7, 1906	148	45
Lewis, E. I.	May 5, 1921	140	48
*McManamy, F.	June 28, 1923	138	53
Yeomans, J. D.	May 2, 1894	130	49
Morrison, W. R.	March 31, 1887	129	63
Campbell, J. B.	May 5, 1921	116	53
Daniels, W. M.	Oct. 6, 1914	111	47
Veazey, W. G.	Sept. 10, 1889	88	54
Esch, J. J.	March 28, 1921	86	60
*Porter, C. R.	Jan. 28, 1928	83	56
Brainerd, E.	Feb. 23, 1927	82	49
Lane, F. K.	July 2, 1906	80	41
*Farrell, P. J.	June 7, 1928	79	59
Fifer, J. W.	Nov. 14, 1899	73	59
Cockrell, F. M.	March 11, 1905	70	71
Woodlock, T. F.	March 25, 1925	65	59
Cox, F. I.	Sept. 1, 1921	63	51
*Lee, W. E.	Jan. 18, 1930	59	52
*Tate, H. M.	Feb. 8, 1930	59	48
Cooley, T. M.	March 31, 1887	58	63
Potter, M. W.	June 24, 1920	56	54
Bragg, W. L.	March 31, 1887	53	49
*Mahaffie, C. D.	Sept. 2, 1930	52	46



Taylor, R. V.	Jan. 16, 1926	48	67
Schoonmaker, A.	March 31, 1887	45	59
Wooley, R. W.	Oct. 5, 1917	39	46
McDill, J. W.	Jan. 13, 1892	26	58
Walker, A. F.	March 31, 1887	24	45
*Miller, C.	June 14, 1933	19	58
Calhoun, W. J.	Mar. 21, 1898	18	50
Anderson, G. W.	Oct. 15, 1917	13	56
*Splawn, W. M. W.	Jan. 10, 1934	12	51
Ford, J. H.	June 11, 1920	9	69
Marble, J. H.	March 10, 1913	8	44

*Federal Reserve Board*

Name	Date of Appointment	Months of Service	Age at Appointment
*Miller, A. C.	Aug. 10, 1914	245	48
*Hamlin, C. S.	Aug. 10, 1914	245	53
*James, G. R.	May 14, 1923	139	57
Platt, E.	June 8, 1920	121	55
Harding, W. P. G.	Aug. 10, 1914	96	50
Cunningham, E. H.	May 14, 1923	91	53
Crissinger, D. R.	May 1, 1923	53	63
Warburg, P. M.	Aug. 10, 1914	48	46
Delano, F. A.	Aug. 10, 1914	45	50
Young, Roy A.	Oct. 4, 1927	35	45
Meyer, E.	Sept. 16, 1930	32	55
Mitchell, J. R.	May 12, 1921	24	53
Magee, W. W.	May 18, 1931	20	60
*Szymczak, M. S.	June 14, 1933	19	39
Strauss, Albert	Oct. 25, 1918	17	48
Black, E.	May 19, 1933	15	60
Moehlenpah, H. A.	Nov. 10, 1919	9	52
*Thomas, J. J.	June 14, 1933	6	64
Wills, D. C.	Sept. 29, 1920	5	48
*Eccles, M. S.	Nov. 15, 1934	2	44
Campbell, M. D.	March 14, 1923	$\frac{1}{2}$	

*Federal Trade Commission*

Name	Date of Appointment	Months of Service	Age at Appointment
Humphrey, W. E.	Feb. 25, 1925	103	63
Hunt, C. W.	June 16, 1924	99	60
Thompson, H.	Jan. 17, 1919	92	43
*Ferguson, G. S.	Nov. 14, 1927	86	49
Nugent, J. F.	Jan. 15, 1921	81	52
Murdock, V.	Sept. 4, 1917	76	46
McCulloch, E. A.	Feb. 11, 1927	71	66
*March, C. H.	Feb. 11, 1929	71	59
Gaskill, N. B.	Feb. 1, 1920	61	45

Van Fleet, W. N.	June 30, 1922	50	56
Colver, W. B.	March 21, 1917	42	47
Harris, W. J.	March 16, 1915	38	47
Davies, J. E.	March 16, 1915	36	37
Fort, J. F.	March 20, 1917	32	65
Myers, A. F.	Aug. 2, 1926	30	37
Parry, W. H.	March 16, 1915	25	51
Hurley, E. N.	March 16, 1915	22	51
Pollard, J. G.	March 10, 1920	19	49
*Davies, E. L.	May 26, 1933	19	57
Rublee, G.	March 15, 1915	14	47
Landis, J. M.	Oct. 10, 1933	9	34
Mathews, G. C.	Oct. 27, 1933	9	47
*Ayres, W. A.	July 1, 1934	6	67
Stevens, R. B.	June 9, 1933	4	59

*United States Tariff Commission*

Name	Date of Appointment	Months of Service	Age at Appointment
Costigan, E. P.	March 26, 1917	131	43
Marvin, T. O.	March 24, 1921	114	54
*Brossard, E. B.	July 22, 1925	113	36
*Page, T. W.	March 8, 1918	111	52
Culbertson, W. S.	March 23, 1917	98	33
Lewis, D. J.	March 26, 1917	95	48
Dennis, A. P.	March 16, 1925	77	56
Dixon, L.	March 10, 1927	66	67
Lowell, S.	July 6, 1926	50	68
Glassie, H. H.	March 8, 1923	49	52
Burgess, W.	July 6, 1921	47	64
Coulter, J. L.	Sept. 17, 1930	45	49
*O'Brien, R. L.	Dec. 1, 1931	37	66
Kent, W.	March 23, 1917	33	53
Clark, F.	March 21, 1928	28	68
Taussig, F. W.	March 26, 1917	28	58
Ornburn, F. M.	February 15, 1932	18	42
Fletcher, H. P.	Sept. 17, 1930	15	57
Baldwin, A. H.	July 22, 1925	13	60
*Ryder, O. B.	June 22, 1934	6	47
Collier, J. W.	March 28, 1933	6	60
Roper, D. C.	April 26, 1917	5	50
Crisp, C. R.	Oct. 4, 1932	3	62

*Federal Radio Commission*

Name	Date of Appointment	Months of Service	Age at Appointment
Sykes, E. O.	March 15, 1927	87	51
La Fount, H. A.	Nov. 14, 1927	79	47
Starbuck, W. D. L.	May 2, 1929	58	43
Robinson, F. E.	March 30, 1928	46	59

## FEDERAL COMMISSIONERS

Saltzman, C.	May 2, 1929	33	58
Brown, T. H.	March 28, 1932	27	45
Caldwell, O. H.	March 15, 1927	23	39
Hanley, J. H.	April 1, 1933	15	52
Pickard, S.	Nov. 1, 1927	15	32
Bellows, H. A.	March 15, 1927	8	41
Bullard, W. G. H.	March 15, 1927	8	61
Dillon, J. H.	March 15, 1927	7	62

*Federal Power Commission*

Name	Date of Appointment	Months of Service	Age at Appointment
*Draper, C. L.	Dec. 22, 1930	48	55
*McNinch, F. R.	Dec. 22, 1930	48	57
Smith, G. O.	Dec. 22, 1930	34	59
Williamson, R. B.	Dec. 22, 1930	24	51
Garsaud, M.	Dec. 22, 1930	18	49
*Drane, H. J.	June 22, 1933	18	70
*Manly, B.	June 25, 1933	18	47
*Seavey, C. L.	Aug. 13, 1934	5	60

The Securities and Exchange Commission, composed of five men, was established on June 30, 1934. The seven members of the Federal Communications Commission were appointed on July 1, 1934.

The distribution of age at time of appointment is indicated by the following table:

*Age at Time of Appointment*

	ICC	FRB	FTC	USTC	FPC	FRC	SEC	FCC	Totals
Under 35	0	0	1	1	0	1	0	1	4
35-44	5	2	3	3	0	3	1	0	17
45-54	24	11	11	8	3	4	4	3	68
55-60	9	5	5	5	4	2	0	2	32
61 and over	5	2	4	6	1	2	0	1	21
Unknown	0	1	0	0	0	0	0	0	1
	43	21	24	23	8	12	5	7	143

## APPENDIX L

### *Public Office Following Commission Service*

The following table shows the total number of instances where service in one or more governmental positions followed commission experience. In order to indicate more clearly the significance of these figures relative to the total 143, the number of those serving, of those unknown, and of those who died in office are also included.

Unit	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
City	1	0	0	0	0	0	0	0	1
State	0	0	1	0	0	0	0	0	1
Federal Administration	4	0	1	3	1	0	0	0	9
Legal	0	0	3	2	0	0	0	0	5
Commissions	0	0	5	0	4	0	0	0	9
Diplomats	1	0	0	1	0	0	0	0	2
Congress	0	0	0	1	0	0	0	0	1
Senate	0	0	1	1	0	0	0	0	2
Judicial	3	0	0	0	0	0	0	0	3
Fed. Res. Bank Off.	0	5	0	0	0	0	0	0	5
Miscellaneous	2	0	4	0	0	0	0	0	6
Total	11	5	15	8	5	0	0	0	44
Serving	11	6	4	4	0	5	7	5	42
Died in office	4	2	2	3	2	1	0	0	14
Unknown	3	0	0	2	0	0	0	0	5

In only 10 instances have commissioners resigned to be directly appointed to other public offices and not all of these cases are significant.

Landis and Mathews were taken from the Federal Trade Commission to be placed upon the Securities and Exchange Commission and Brown and Sykes were simply retained for the new Communications Board when the Radio Commission was abolished. G. W. Anderson of the I.C.C. resigned to become a Judge of the U. S. Circuit Court of Appeals in Boston, and M. A. Knapp of the I.C.C. to serve as Judge of the Commerce Court and later on the Circuit Court of Appeals. C. A. Prouty resigned to become director of the Bureau of Valuation on the I.C.C.

In these last three cases it appears that the attraction of a surer tenure of office may have been a factor in determining the action of the commissioners. In three other cases men stepped from the com-

misions to accept appointive political office. Franklin K. Lane resigned from the I.C.C. to become Wilson's Secretary of the Interior 1913-20 and Vice-President of the Pan-American Petroleum Company from 1920 until his death in 1921. D. C. Roper, now Secretary of Commerce, served on the Tariff Commission for 5 months in 1917 before President Wilson made him Commissioner of Internal Revenue. Roper gives an interesting account of the circumstances explaining his withdrawal from the Tariff Commission:

Six months after President Wilson appointed me as Vice Chairman of the Tariff Commission, the large 1917 income tax law was enacted. While the bill was in conference between the two Houses, Secretary McAdoo sent for me and advised that he felt I was necessary to organize the Bureau of Internal Revenue and collect these taxes for the financing of the War. I told him that notwithstanding the fact that I had been given the long tenure appointment on the Tariff Commission, if he regarded it as a War duty, I would be very glad to resign and undertake the office of the Commissioner of Internal Revenue. This he thought was the case and I immediately resigned for the purpose indicated.

From 1921 to 1933 Roper practiced law in Washington, devoting himself especially to departmental practice and, primarily, tax matters. (Personal letter)

W. S. Culbertson was "kicked upstairs" when President Coolidge accepted his resignation from the Tariff Commission to send him off as Minister to Roumania.

W. J. Harris left the Federal Trade Commission to become the Senator from Georgia and J. E. Davies, at the instigation of President Wilson, resigned to become the Democratic candidate for Senator from Wisconsin. Some years after commission service, D. J. Lewis was elected to the House and E. P. Costigan to the Senate.

## APPENDIX M

### *Occupation after Service on Commission*

Although we cannot ascertain in most instances the motivation that led to a withdrawal from the federal service, we can examine the occupations pursued by our commissioners after leaving office. A summary view is given in the following table:

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Public Service	9	6	7	7	3	0	0	0	32
Law	12	0	6	5	3	0	0	0	26
Education	2	0	1	1	0	0	0	0	4
Journalism	1	1	2	0	1	0	0	0	5
Business	2	5	3	2	2	0	0	0	14
Engineering	0	0	0	0	0	1	0	0	1
Agriculture	0	1	0	1	0	0	0	0	2
Trade Unionism	0	0	0	1	0	0	0	0	1
Tariff Advising	0	0	0	1	0	0	0	0	1
Serving	11	6	4	4	0	5	7	5	42
Retired	3	0	2	0	0	1	0	0	6
Died in Office	4	2	2	3	2	1	0	0	14
Unknown	2	0	1	2	1	0	0	0	6

#### *Names Appearing More than Once*

I.C.C.		U.S.T.C.	
Calhoun, W. J., Law and Public Service		Hurley, E. N., Business; Public Service	
Cockrell, F. M., Public Service; Retired		Myers, A. F., Business; Law	
Ford, H. J., Public Service; Education		Pollard, J. G., Education; Public Service	
Lane, F. K., Public Service; Business			
Potter, M. W., Law; Business			
Walker, A. F., Law; Business (Railroads)			
F.T.C.		U.S.T.C.	
Colver, W. B., Journalism; Business		Costigan, E. P., Public Service	
		Culbertson, W., Public Service; Law	
		Lewis, D. J., Law; Public Service	
		Roper, D. C., Public Service; Law	

An examination of individual cases gives a better insight into these figures. Of the lawyers who retired after experience on the I.C.C., the Federal Trade Commission, or the Federal Radio Commission, it can be definitely said that their contact with the federal government brought them clients and encouraged them to set up their offices in the capital.

The value of administrative experience for other professions is not so clear. Of the 15 former members of the Federal Reserve Board, 2 have

held other important administrative offices, 5 others have become either agents or governors within the Federal Reserve System and 5 returned to private business. Of this quintet Albert Strauss and P. M. Warburg resumed their banking activities in New York City. Daniel R. Crissinger resigned to become, at 67 years of age, chairman of the Executive Committee of the F. H. Smith Company in Washington, D.C. Henry A. Moehlenpah, at the expiration of his term, became president of the Bankers Financial Corporation and Edmund Platt at 65 resigned to join the Marine Midland Corporation as a vice-president.

Five commissioners returned to journalism after their service. Victor Murdock resigned from the Federal Trade Commission to return as editor-in-chief to the paper on which he was formerly managing editor—the Wichita *Daily Eagle*. W. B. Culver, at the expiration of his term on the same commission, resumed his journalistic work by taking over the editorial management of the Scripps-Howard papers.

Four commissioners returned to teaching. Winthrop M. Daniels resigned from the I.C.C. to assume a chair at Yale University as Professor of Transportation. He was a professor of political economy at Princeton from 1892 until he joined the commission in 1911. The academic career of H. J. Ford was not affected by his brief and unsatisfactory contact with the I.C.C. Professor Taussig added weight to his established reputation by his work on the Tariff Commission. J. G. Pollard, after the expiration of his term on the Trade Commission, spent an academic interval at William and Mary College before being elected Governor of Virginia. He is now chairman of the Board of Veterans' Appeals. Sam Pickard, through his teaching "over the air," won governmental employ, but after 15 months as a Federal Radio Commissioner, he resigned to become a vice-president of the Columbia Broadcasting Company. This is the clearest case in recent years where a man has used a commissionership as a stepping stone to material advantage outside the government.

## APPENDIX N

### *The Senate and the Confirmation of Appointments*

To what extent, as an actual matter of fact, has the Senate affected appointments to these commissions? The following Table indicates the Senate's treatment of recess appointments.

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
For unexpired vacancy	5	6	3	6	2	0	0	0	22
For full term	12	1	7	12	3	4	5	7	51
Confirmed recesses	14	6	6	12	4	4	7	5	58
Unconfirmed recesses	3	1	4	6	1	0	0	0	15

The only figures that call for analysis are those relating to the unconfirmed recess appointments. The Table gives a total of 15 instances in which the recess appointment was unconfirmed, but Senate opposition is not the explanation in every case. H. Gary resigned from the F.C.C. January 1, 1935, before his appointment was sent to the Senate. H. A. Bellows of the F.R.C. explains his situation as follows:

My confirmation by the Senate was held up because the appointment was received just before the close of the session and certain Senators said they wanted to look into my political status as a Democrat before confirming the appointment. I resigned from the Commission before Congress met again and consequently never came up for confirmation, but there was no difficulty whatever in the passage of a bill covering the payment of my salary the entire period of my service. (Personal letter)

As already noted on page 71, the Senate had nothing to do with 2 of the 4 unconfirmed recess appointments on the Federal Trade Commission.

What of the 6 unconfirmed recess appointments to the U. S. Tariff Commission? Two of these appointments relate to E. B. Brossard who, although attacked on political grounds on several occasions, has been on the Commission nearly 10 years and is still serving. The lack of confirmation in the case of A. H. Baldwin and D. J. Lewis arises from the fact that Coolidge did not submit their names. It is impossible to state in these two instances whether or not the President was bowing to an anticipated rejection. This was the situation with regard to Glassie's reappointment. He was originally selected by President Coolidge to fill the unexpired portion of a term ending in 1926 and he remained under a recess appointment until March 4, 1927. But Coolidge was undoubtedly



fearful that the Senate would refuse Glassie confirmation and hence appointed Lincoln Dixon, a former member of Congress. Glassie was made a special assistant to the Attorney General and returned to the Department of Justice where he had already served for about 7 years in the past and where he is now engaged. The sixth case is that of the veteran Congressman Crisp. He explains: "My nomination to the Tariff Commission was not individually challenged, but after President Roosevelt was elected the Democrats of the Senate decided not to confirm any of President Hoover's appointees pending before the short session of the Seventy-second Congress. I had assurances from the highest Democratic sources that President Roosevelt would reappoint me and that I would be confirmed." Crisp resigned, however, before the Senate had an opportunity to pass upon his appointment.

Of the 4 instances remaining, 3 are similar to that of Crisp. The nominations of Mark Potter, Henry J. Ford, and David Wills all reached the Senate just as the term of the President who sent the appointments was expiring. The Senate failed to confirm these recess appointments. Potter's appointment, however, was confirmed after the inauguration of President Harding. He describes the circumstances in his case thus:

I was appointed in June 1920 and took up service as a Recess Appointee. During the following session of the Congress it was my understanding that the Republicans had a very small majority in the Senate and, because of this fact, I was informed that the Senate refrained from going into executive session, apprehending that they might lose control of the session, and a large number of nominations, etc. which had been made by President Wilson might be confirmed. It appeared that the Senate would not go into executive session at any time before adjournment. In this situation, I announced my intention to retire from the Commission promptly. This intention having become known, a friend of President-elect Harding, who knew me, went to Marion and explained the situation to Mr. Harding. Shortly thereafter I was told that President-elect Harding said, "Tell Potter to stick and I will send in his name immediately after the inauguration." He did this and I immediately was confirmed.

The last case remaining in the foregoing Table of recess appointments is the most interesting of all and has attracted the most attention. John J. Esch was originally appointed March 22, 1921 by President Harding for a term to expire December 31, 1927. On January 3, 1928 President Coolidge gave Esch a full term recess appointment, but when Congress convened in March, a great dispute arose. Here the question of reappointment became an issue between rival sections. As a result the appointment of Esch was not confirmed by the Senate (see page 73).

## APPENDIX O

### *The Senate and Nominations of Commissioners*

Complete public records are not available of all the nominations sent to the Senate; figures back to 1901 were obtained, with a few gaps for Congressional sessions during 1908 to 1912 and another gap of May to November 1919. These flaws in the records, while unfortunate, do not rob the data that are obtainable of their general purport. Because of the very nature of the problem, categorical answers cannot be found in any event. There is one way, however, of getting some notion as to how many nominations were challenged in the Senate.

As a general practice the Senate acts upon the appointments of the President with great promptitude. The messenger from the White House is received immediately and the proceedings of the chamber are halted until the message of the Chief Executive is delivered. In the great majority of cases, nominations are referred to committee at once and often reported to the Senate the next day. Generally they are confirmed at once. If it is assumed, therefore, that delay is a sign of opposition, we can hazard an estimate of the number of cases challenged by examining the time consumed in passing upon appointments.

The following Table based on the limited data obtainable, shows the period that elapsed from the time the nomination was received and referred to committee, until it was finally confirmed by the Senate.

<i>Confirmation of Nominations</i>									
	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Requiring less than:									
One week	28	10	9	15	16	2	0	5	85
Two weeks	10	3	9	2	0	1	0	0	25
Three weeks	4	4	2	0	1	4	0	0	15
Four weeks	3	0	1	2	0	1	6*	0	13
Requiring more than:									
One month	8	8	2	10	3	0	0	0	31

\* During most of this period the World Court debate was the chief business before the Senate. Prall was confirmed in 5 days.

It is clear from this Table that as a general practice the Senate loses little time in disposing of the nominations sent by the President. If we total all the instances where the Senate has acted within less than one week and less than two weeks, with the total of all the cases where a

longer period has elapsed, we get a ratio of 110 to 59. If our assumptions are correct as to the significance of delay, it would appear that some opposition arose in about one case in every three. The ratio is probably much lower, inasmuch as several names are sometimes considered together, and opposition to one appointee may hold up the confirmation of the rest. Thus, the opposition to Fletcher's nomination to the Tariff Commission served to delay likewise the confirmation of his 5 colleagues whose names were submitted at the same time.

## APPENDIX P

### *Appointments and Reappointments*

We have already noted that of the 43 men who have been appointed to the I.C.C. 26 have been reappointed. But what of the remaining 17? Four of these are still serving their first term and one died during his first term of office. This leaves us with just one dozen cases where reappointments were not made. How are these to be explained? In six instances the commissioners either resigned before the expiration of their first term or else refused to accept a reappointment. Two others were faced with a hostile Senate when the time of their reappointment came around and were further handicapped by old age.

This leaves four cases where the President's responsibility was clear. Concerning Augustus Schoonmaker of the original Interstate Commerce Commissioners no details are available. He was a Cleveland appointee from New York who served for one term but was not reappointed by Harrison. At the end of his first term, R. V. Taylor was denied reappointment by Hoover on the ground of old age. The Commissioner very much doubted the sincerity of this reason and held to the interpretation that he was dismissed because of political enemies that he had made through his decisions while on the I.C.C.

The two remaining cases of men who were refused appointments at the expiration of their first term involve Ezra Brainerd and F. I. Cox. "Politics" played a part in both instances. Cox was a political supporter of President Harding, a friend of Senator Frelinghuysen, and "probably the weakest member of the Commission during his term."<sup>1</sup> Cox was appointed because he was a representative of the travelling salesmen. President Coolidge did not reappoint him because he did not feel that continued recognition of this class was warranted.<sup>2</sup> Sectional politics may have played a part also. Cox was succeeded by Brainerd who had been active in Oklahoma politics and came from the right part of the country. After the expiration of his 82 months of service in December 1933 and his failure to secure a reappointment, Brainerd declared: "I am not now a member of the Commission due to the fact, as I understand it, that I am a Republican and not a Democrat." The general

<sup>1</sup> See Mansfield, *op. cit.*, p. 165.

<sup>2</sup> Personal interview with a former secretary of President Coolidge.

conclusion, however, is not vitiated by these few cases. Our Presidents have very rarely denied reappointments to the I.C.C. on purely partisan grounds. They have loyally supported a two-term tradition.

Of the 26 reappointments, the President and the commissioner were of the same party in 17 cases and of opposite parties in 9 cases. Six of these reappointments brought back to the Commission men who not only belonged to the opposing party but who also were the original appointees of a President belonging to this opposing party. The distribution of reappointments between the two parties works out very evenly with 14 Republicans given a second term and 12 Democrats.

The few reappointments made to the Tariff Commission and the Federal Reserve Board seldom meant the return to office of a commissioner by a President who belonged to the opposing party.

Let us examine the cases of those who failed to receive a reappointment to their place on the Federal Trade Commission. Of the 24 men who have served only 8 were appointed to another term and none at all to a third term. Of the 16 one term appointees, 2 died in office and 3 are still serving their initial span. This leaves 11 who might have been reappointed. Why is it that nearly half of these commissioners failed to go on to another term?

James M. Landis and George C. Mathews were transferred by President F. D. Roosevelt to the new Securities and Exchange Commission.

Joseph E. Davies resigned from the Commission to become the Democratic candidate for the U. S. Senate from Wisconsin in 1918. This was a by-election and Mr. Davies was encouraged to run for office by President Wilson. Commissioner W. J. Harris also resigned the month following to win the Senatorship from Georgia.

E. N. Hurley resigned in 1917 to engage in business but became president of the Emergency Fleet Corporation within a few months. Vernon W. Van Fleet resigned before his term expired to engage in the practice of law in Washington.

R. B. Stevens was appointed to fill an unexpired vacancy for four months and then returned to Siam as advisor on foreign affairs. George Rublee served a brief recess appointment which was unconfirmed. The three remaining first term commissioners were all Wilson appointees and two were Democrats. They reached the end of their terms during a Republican Administration and they were not reappointed.

It is noteworthy that of the 8 second appointments on the Federal

Trade Commission, 6 meant the return of members belonging to the same party as the President making the reappointment. The other two cases were simply the reappointment by Wilson of the Republicans he had originally appointed. One was Victor Murdock, a Kansas Republican who had voted for Wilson in 1916, and the other was J. F. Fort who had been Wilson's predecessor as Governor of New Jersey and long associated with the President in various governmental tasks.

It is important to note that only in the case of the Interstate Commerce Commission has the practice of third appointments clearly become significant, although two members of the Federal Reserve Board are now serving for a third term. Of the 12 I.C.C. commissioners to be thrice appointed, 3 are serving today. Besides the case of Brossard mentioned above, there are only two instances of third appointments on other boards and both of these were made by Hoover. Dixon, a Democrat, was placed on the Tariff Commission by Coolidge and twice named by Hoover, and E. O. Sykes, a Democrat, was given two terms on the Radio Commission by Coolidge and a third term by Hoover. These men, however, were unable to complete their original terms of office, because of the reorganization of the commissions on which they served. The reappointments do not therefore mean that they enjoyed a long tenure of office. Dixon served for 66 months and Sykes for 87.

There have been only four cases of men reappointed to serve a fourth term and only one appointment to a fifth term. J. C. Clements, a Democrat, was named to the I.C.C. by President Harrison to serve the 22 months of an unexpired vacancy and reappointed by Cleveland to a full six year term, and subsequently reappointed for full terms by McKinley, by T. Roosevelt and by Woodrow Wilson. His service of 303 months extended from 1892 to 1917.

T. Roosevelt and Herbert Hoover made the only fourth term appointments. Three were to the I.C.C. and the only other case was that of E. D. Brossard, a Republican, who was named by Coolidge for two terms on the Tariff Commission and twice reappointed by Hoover. In addition to the service of J. C. Clements already noted, the two remaining instances of fourth appointments on the I.C.C. are those of M. A. Knapp, a Republican, appointed by Harrison and reappointed once by Cleveland and twice by T. R. Roosevelt, and B. H. Meyer, a Republican, first selected by Taft and reappointed by Wilson, by Coolidge and by Hoover.

A summary showing the relative number of appointments and re-appointments made to the various commissions is set forth in the following tables:

TABLE OF TOTALS

*First Appointments*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Cleveland	7								7
Harrison	4								4
McKinley	2								2
Roosevelt, T. R.	4								4
Taft	2								2
Wilson	9	9	12	7					37
Harding	5	5	1	3					14
Coolidge	5	1	6	6	8				26
Hoover	3	2	0	5	3	5			18
Roosevelt, F. D.	2	4	5	2	1	3	7	5	29
Totals	43	21	24	23	12	8	7	5	143

*Second Appointments*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Cleveland	3								3
Harrison	3								3
McKinley	1								1
Roosevelt, T. R.	2								2
Taft	2								2
Wilson	5	1	3	2					11
Harding	3	0	0	1					4
Coolidge	5	2	3	4	1				15
Hoover	2	2	1	3	4	1			13
Roosevelt, F. D.	0	0	1	0	0	1	0	0	2
Totals	26	5	8	10	5	2	0	0	56

*Third Appointments*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Cleveland	1								1
Harrison	0								0
McKinley	1								1
Roosevelt, T. R.	3								3
Taft	0								0
Wilson	1	0	0	0					1
Harding	2	0	0	0					2
Coolidge	3	1	0	0	0				4
Hoover	1	0	0	2	1	0			4
Roosevelt, F. D.	0	1	0	0	0	0	0	0	1
Totals	12	2	0	2	1	0	0	0	17

*Fourth Appointments*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Cleveland	0								0
Harrison	0								0
McKinley	0								0
Roosevelt, T. R.	2								2
Taft	0								0
Wilson	0	0	0	0					0
Harding	0	0	0	0					0
Coolidge	0	0	0	0	0				0
Hoover	1	0	0	1	0	0			2
Roosevelt, F. D.	0	0	0	0	0	0	0	0	0
Totals	3	0	0	1	0	0	0	0	4

*One fifth term appointment to the I.C.C. by  
President Wilson*

*Totals for all Appointments*

	ICC	FRB	FTC	USTC	FRC	FPC	FCC	SEC	Totals
Cleveland	11								11
Harrison	7								7
McKinley	4								4
Roosevelt, T. R.	11								11
Taft	4								4
Wilson	15	10	15	9					49
Harding	10	5	1	4					20
Coolidge	13	4	9	10	9				45
Hoover	7	4	1	11	8	6			37
Roosevelt, F. D.	2	5	6	2	1	4	7	5	32
Totals	84	28	32	36	18	10	7	5	220



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